
(2006) 05 PAT CK 0068

In the Patna High Court

Case No : Criminal Miscellaneous No. 21711 of 2004

Md. Gazi and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 16-05-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 204, 244(1), 294, 432
Penal Code, 1860 (IPC) — Section 120B, 323, 34, 341, 354

Citation : (2006) 3 PLJR 129

Hon'ble Judges : Sadanand Mukherjee, J

Bench : Single Bench

Advocate : Nadin Seraj and Jainul Abedin, for the Appellant; Addl. P.P. and Lal Bahadur Pandey, for the Respondent

Judgement

Sadanand Mukherjee, J.—This is an application u/s 432 of the Code of Criminal procedure (hereinafter to be referred to as "Cr.P.C. ") for quashing the order dated 22.03.2004 passed by the learned Judicial Magistrate, Bettiah in Complaint Case No. 1439C of 2003 whereby and whereunder the learned Magistrate took cognizance of offence against the petitioners under Sections 376, 120(B) of the Indian Penal Code as also for quashing the entire criminal prosecution.

2. A complaint case was lodged by one Aalo Devi against the petitioners in which it has been alleged that when she went for natural call in the field with her mother-in-law, the accused persons accosted her, one Raju Das (petitioner No. 4) pushed her, as a result of which she fell down and thereafter accused Ahmad Ali (Petitioner No. 2) and Dashrath Das (petitioner No. 3) caught hold of the hands and legs of the complainant. Md. Ahmad Ali also slapped the complainant and Md. Gazi (petitioner No. 1) committed rape upon the complainant. The mother-in-law tried to raise alarm but she was prevented by Raju Das. Further allegation is that while Ahmad Ali was attempting to commit rape on the complainant, the husband of the complainant came and seeing him the accused persons fled away.

3. It appears that in this case, in course of enquiry u/s 202 Cr.P.C., after

examination of the complainant on solemn affirmation other witnesses, Man Kumari Devi, mother-in-law of the complainant, Bhola Khan and Bhaju Gopal Das, the husband of the complainant, have been examined who, all have supported the case of the complainant.

4. It has been submitted that the allegation levelled against the petitioners is wrong, false and concocted. The entire allegations were found to be concocted for some ulterior motive and there was no medical examination of the complainant which belies the prosecution case, it has also been contended on behalf of the petitioner that petitioner No. 1 is a Prakhanda pramukh of Jogapatti Panchayat and petitioner No. 2, Ahmad Ali, is the Mukhia of the said Panchayat. It has also been submitted that other petitioners are agnates of the complainant having relationship as own son of "Bhaisur" and cousin of the complainant, respectively. Petitioners were the mediators of the Panchayat held on 19.4.2002 to resolve the land dispute between the husband of complainant and family of petitioners No. 3 and 4, namely, Dasarath Das and Raju Das @ Raj Kumar Das, and the present case has been lodged as petitioners No. 1 and 2, namely, Md. Gazi and Md. Ahmad, had given their decision in favour of the family of the petitioners No. 3 and aforesaid.

5. On behalf of the petitioners motive has been alleged for false implication stating that petitioner No 1, being Panchayat Samiti member brought a no-confidence motion against the pramukh of Jogapatti with the help of majority of Panchayat Samiti members and the special meeting was called in which the Pramukh lost the confidence of house. The petitioners names of one Sri Vishwa Mohan Sharma as the person who hired and conspired the complainant to file this false case as Pramukh of the Panchayat was his close associate. On behalf of the petitioners further motive has been alleged that in the Panchayat held on 19.4.2002, the husband of the complainant was not favoured by the Panchas in the matter of settlement of land in exclusion of the two brothers of the husband of the complainant. It has been submitted that different story has been stated, which are not consistent with the case of the complainant and this case of complaint has been made as unbelievable. It has also been stated that the witnesses are interested and their statements are cryptic and flimsy. Besides general public also sent a joint petition stating that the complainant is a woman of dubious character. An instance for instituting case against petitioners Nos. 3 and 4 has been given stating that Jogapatti P. S. Case No. 1 of 2004 under Sections 341, 323, 354, 448 and 504/34 of the Indian Penal Code was lodged by the complainant and thus the complainant is habituated in filing the false case implicating the innocent persons. therefore, it has been stated that order of cognizance is bad in law and is fit to be quashed under the inherent jurisdiction of this Court.

6. It appears that in this case a witness have supported the case in the matter of commission of rape by Md. Gazi, one of the petitioners with the help of other accused petitioners. On behalf of the petitioners the enquiry u/s 202 Cr.P.C. has

been challenged stating that the complaintant has been concocted further that the case is liable to be quashed and the allegations are motivated and absurd. Besides that, the reasons for false implication have been elaborated on behalf of the petitioners. In this connection it may be pointed out that the scope of enquiry u/s 202 Cr.P.C, has been broadly discussed in (1976) 3 SCC 737 It is held as follows:

The scope of the inquiry u/s 202 of the Code of Criminal procedure is extremely limited only to the ascertainment of the truth falsehood of the allegations made in the complaint- (i) on the materials placed by the complainant before the court; (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have. It is not the province of the Magistrate to enter into a detailed discussion of the merits or or demerits of the case nor can the High Court go in --to this matter in its revisional jurisdiction which is a very limited one. In proceedings u/s 202 the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not.

Hence the scope of the petitioners in supporting their case by setting up the defence case does not exist as the petitioners have not been able to show that the allegations in the complaint do not disclose essential ingredients as alleged nor such allegations are absurd and improbable. The petitioners have also not been able to show that the complaint suffer from fundamental legal defects such as want of sanction or absence of complaint, by legally competent authority.

7. In the impugned order the learned Magistrate found it to be a fit case for issuance of processes. In the order it has been stated that from perusal of complaint--allegations, the statement of complainant recorded on S.A., the evidence of inquiry witnesses, namely, Man Kumari Devi, Bhola Khan, Bhaju Gopal Das, who have also supported the case of the complainant, and the circumstances of the case it was found by the learned Magistrate that a prima facie case for the offence under Sections 376, 120(B) is made out against the accused persons named in the complaint petition and there is sufficient material for proceeding against the accused persons. The order of issuance of process has been passed u/s 204 Cr.P.C. after being satisfied that the prima face case exists.

8. At this stage for deciding the question whether the proceeding is fit to be quashed or not, the case has to be seen purely from the point of view of the complaint without at all adverting to any defence that the accused may have. It appears that the Magistrate actually applied his mind stating about those witnesses who have deposed as eye witnesses regarding the actual offence and the part attributed to the accused persons. At this stage this Court shall not proceed on the premises that it was incumbent upon the Magistrate to consider the truth or falsehood of the allegations made by the complainant which can only be analysed at the stage of evidence before charge and the Magistrate while

issuing process while exercising discretion shall give cogent reason for its conclusion. However, after the evidence is taken Section 294 Cr.P.C. is recorded, if a prayer is made, for discharge, the same shall be considered on the basis of the evidence produced on behalf of the petitioners by the complainant. Before framing of charge against the accused persons, the Magistrate shall see whether on the basis of the evidence led by the complainant u/s 244(1) Cr.P.C. prima facie case u/s 376 and 120B I.P.C. is made out or not for the framing of charge and on that point give a reasoned order according to law.

9. In the result this criminal miscellaneous case is disposed of with the aforesaid observation.