(1999) 08 PAT CK 0110

In the Patna High Court

Case No : Criminal Miscellaneous No. 7534/97 (R)

Md. Khursid Anwar and Ram Kumar Sinha APPELLANT

Vs

State of Bihar and Sri Pradeep Pandey RESPONDENT

Date of Decision : 06-08-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 323, 34, 341, 353, 379

Citation : (2001) 1 PLJR 385

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : M.M. Banerjee and D.K. Chakravorty, for the Appellant; Assistant Public Prosecutor and R.S. Mazumdar, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In this application filed u/s 482 Code of Criminal Procedure the Petitioners have prayed for quashing the entire criminal proceeding initiated against them in connection with City P.S. case No. 454/97 for an offence under Sections 323/379/504/386/34 of the Indian Penal Code pending before the Judicial Magistrate, 1st class, Dhanbad.

2. The Petitioners case is that-on 18.6.97 the complainant, opposite, party No. 2 along with some of his associates entered in the office of the Petitioners at Katras and started abusing them and quarreling with them. The Petitioners who are the sales tax officers, made a representation to the superior officers bringing to their notice the conduct of the complainant who was in the habit of creating such nuisance in the office it is stated that on the basis of the representation made by the Petitioners the Commissioner, Commercial taxes, Bihar, accorded sanction for launching prosecution as against opposite party No. 2 in relation to the incident which had taken place, on 18.6.97. Accordingly, F.I.R. was lodged on 1.8.97 against the complainant for an offence under Sections 448, 353, 385 341 and 504/34 of the Penal Code which was registered as Katras PS case No. 185/97. It

is stated that in the meantime, the opposite party No. 2 came to know about the aforesaid fact lodged the instant complaint case in defence before the Chief Judicial Magistrate, Dhanbad making false and frivolous allegations against the Petitioners. On the basis of the said conmplaint and the evidences of the witnesses the Judicial Magistrate, Dhanbad took cognizance of the offence on 25.11.97 against the Petitioners.

3. Mr. M.M. Banerjee learned Counsel appearing on behalf of the Petitioners firstly submitted that the allegations, made in the complaint petition are forged and fabricated and mala fide inasmuch as the Petitioners are innocent and have committed no offence as alleged in the complaint petition. Learned Counsel has drawn my attention to the statement of one Gopal Prasad as contained in annexure-5 to the petition and submitted that said Gopal Prasad gave statement that he had never authorized the complainant/opposite party No. 2 to make any grievance to the Petitioners in respect of this matter which may suggest commission of any offence by the Petitioners.

4. It is well settled that in a proceeding initiated on a complaint, inherent power to quash the said proceeding can be exercised by this Court only in cases where the complaint does not disclose any offence or is frivolous or vexatious. It is not necessary that there should be meticulous analysis of the case before trial to find out whether the case would end in conviction or not. If the allegation made in the complaint petition, prima facie, constitutes an offence and the Magistrate is satisfied with the allegations and the statements of the complainant and takes cognizance, then this Court is not supposed to quash the cognizance on additional materials produced by the accused.

5. In the light of the said settled proposition of law, this Court has to peruse the complaint, a copy of which has been annexed as annexure 4 to this petition. In the complaint petition it is alleged that on 28.6.97 one of the peons of Katras Circle of Sales Tax office, came to the complainant and told that the Deputy Commissioner, Sales Tax is desirous to meet him. The complainant alleged that he went to the office of the Sales Tax Commissioner along with the registered sale deed and other documents which the complainant had to furnish before the authority of BCCL Area. When the complainant entered in the premises of the Sales Tax office with a hand bag containing all papers and was searching for the D.C., Sales tax, all on a sudden the accused persons called him and started abusing and tried to insult the complainant. It is alleged that on protest the accused person became furious and they called two unknown persons who were looking like criminals and the accused persons ordered them to snatch all the belongings of the complainant. It is further alleged that when the complainant raised hulla or alarm many people including the witnesses arrived there and saw the occurrence. Immediately thereafter, one of the unknown persons pointed a knife towards the neck of the complainant and the accused No. 2 said him to kill the complainant. Many more allegations have been made in the complaint petition by the complainant.

6. On the basis of the allegations, made in the complaint and after considering the statements recorded on solemn affirmation the learned Magistrate ;took cognizance of the offence under the aforementioned sections of the Penal Code.

7. On reading of the allegations made in the complaint prima facie, it constitutes an offence and therefore, there is no illegality committed by the Magistrate in taking cognizance on the basis of those allegations coupled with the statements of the witnesses recorded on oath. The only question, therefore, to be considered is whether those allegations are false and fabricated as submitted by Mr. Banerjee, learned Counsel for the Petitioners. Admittedly, some incident took place in the sales tax office either on 18.6.97 or on 28.6.97 for which, according to the Petitioners, they ''filed'' representation before the superior authority requesting for sanction for lodging FIR against the complainant. Admittedly there is allegation and counter allegation in between the complainant and the Petitioners.

8. In view of the admitted position cannot be inferred at this stage that the allegations made by the complainant are false and fabricated. It is therefore, not a fit case where this Court should exercise its inherent power u/s 482 Code of Criminal Procedure and quash the entire prosecution launched against the Petitioners by the complainant by filing a complaint petition. It is also not justified to consider the materials brought by the Petitioners in defence to show that the complaint lodged by the complainant is mala fide.

9. Having regard to the facts and circumstances of the case I do not find any reason to quash the complaint and the order of cognizance. There is no merit in this application which is, accordingly, dismissed.

