
(2012) 07 PAT CK 0034

In the Patna High Court

Case No : Criminal Miscellaneous No. 30462 of 2010

Md. Raus @ Rahis Mian @ Md. Rias and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 18-07-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 482
Penal Code, 1860 (IPC) — Section 147, 323, 379

Citation : (2013) 1 PLJR 579

Hon'ble Judges : Hemant Kr. Srivastava, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hemant Kr. Srivastava, J.—Petitioners, while invoking the extraordinary power of this Court vested u/s 482 of the Cr.P.C., have prayed for quashing the order dated 25.10.2008. passed by Judicial Magistrate, 1st Class, Darbhanga in Complaint Case No. 1532 of 2007 by which and whereunder he having found prima facie case under Sections 147, 323, 379 of the Indian Penal Code ordered to issue summons against the petitioners. The brief fact, which lies to file this quashing petition, is that Opposite Party No. 2, namely, Ram Sundar Devi filed above stated complaint case against the petitioners and others alleging therein that on 23.8.2007 while she was sitting in her house, the petitioners and other accused being armed with lathi, bhala and gadasa came there and entered into her husk house and started filling husk in bags and when she as well as her husband forbade them to do so, petitioner no. 2 ordered the others to kill her as well as her husband and after that all the above stated petitioners and other accused started assaulting her as well as her husband with lathi, danda and bricks. In the meantime, accused, China Miyan ordered her sister who gave one brick blow causing injury on the head of Opposite Party No. 2 whereas accused, Chhote Miyan took out Rs. 1,150/- from the pocket of her husband and also took away a bicycle from the house. She raised alarm which attracted the witnesses who brought her hospital where her treatment was done. The concerned officer

in-charge came to hospital but did not register the case and again on 26.10.2007, the aforesaid petitioners and other accused uprooted her crops and assaulted her. The petitioners and other accused forcibly wanted to take possession of her land.

2. The aforesaid complaint case was enquired u/s 202 of the Cr.P.C. and after that having found prima facie case under the above-stated sections, the learned Judicial Magistrate passed the impugned order dated 25.10.2008 against which this quashing petition has been filed.

3. In my view, this petition can be disposed of on admission stage itself without issuance of notice to Opposite Party No. 2.

4. Learned counsel appearing for the petitioners raised only one point that the offences under Sections 147, 323, 379 of the Indian Penal Code are exclusively triable by the court of Gram Kachahri but learned court below without cancelling the jurisdiction of Gram Kachahri issued process which is not in accordance with law.

5. Learned counsel appearing for the petitioners relied upon a decision reported in 1998(1) PLJR 893, in which it has been held that Magistrate had jurisdiction to cancel the jurisdiction of the Gram Kachahri as envisaged u/s 73 of Bihar Panchayat Raj Act, 1947 but at the same time it was incumbent upon the learned Magistrate to disclose his satisfaction as to under what circumstances he was cancelling the jurisdiction of the Gram Kachahri and in ordinary course when the offences are exclusively triable by Gram Kachahri, cognizance of the offence cannot be taken by the learned Magistrate unless it is by the complainant that there shall be miscarriage of justice at the hands of Panches.

6. Another decision cited on behalf of the petitioners is of Supreme Court 1955 SCR (1) 1444, in which it has been held that when the alleged offence is exclusively triable by the Gram Kachahri, the court cannot take cognizance of the aforesaid offence.

7. Having relied upon the above stated decisions, learned counsel for the petitioners submits that according to Section 106 of Bihar Panchayat Raj Act, 2006, offences under Sections 147, 323 and 379 of the Indian Penal Code are exclusively triable by the Gram Kachahri. So, the learned court below committed an error in taking cognizance of the aforesaid offences without cancelling the jurisdiction of Gram Kachahri.

8. On the other hand, learned Additional Public Prosecutor appearing for the State supported the impugned order and submitted that offence u/s 379 of the Indian Penal Code does not find place in Section 106 of Bihar Panchayat Raj Act, 2006 and, therefore, there was no need for the trial court to cancel the jurisdiction of Gram Kachahri because Gram Kachahri had got no jurisdiction to try the offence of Section 379 of the Indian Penal Code.

9. Having heard the contentions of both the parties, I have gone through the

record as well as relevant provisions of Bihar Panchayat Raj Act, 2006.

10. In Section 106 of Bihar Panchayat Raj Act, 2006, several sections of the Indian Penal Code, 1860 as well as some other offences of different Acts have been made triable by Gram Kachahri but in Section 106 of Bihar Panchayat Raj Act, 2006, Section 379 of the Indian Penal Code does not find place though in proviso of the aforesaid section, it has been mentioned that Gram Kachahri shall not take cognizance of the offence u/s 379 of the Indian Penal Code, if the value of stolen property is more than rupees ten thousand. It appears to me that there is ambiguity in Section 106 of Bihar Panchayat Raj Act, 2006 because in Section 106(a), the offence of Section 379 of the Indian Penal Code does not find place but surprisingly enough that in proviso the aforesaid offence has been mentioned. Moreover, when Section 106(a) of Bihar Panchayat Raj Act does not provide jurisdiction to Gram Kachahri in respect of offence u/s 379 of the Indian Penal Code, in my view, the Gram Kachahri has got no jurisdiction to take cognizance of the offence u/s 379 of the Indian Penal Code and mere mentioning the aforesaid section in proviso of the abovestated section does not make any difference. Therefore, the contention of learned counsel for the petitioners has got no merit because the Gram Kachahri has got no jurisdiction to proceed with the offence u/s 379 of the Indian Penal Code and, therefore, the decisions cited on behalf of the petitioners do not apply in the present case.

11. Except the above-stated contention, no other point has been raised on behalf of the petitioners for quashing the impugned order.

12. On the basis of aforesaid discussions, I am of the opinion that this petition does not have any merit and must be dismissed on admission stage itself.

13. Accordingly, this petition stands dismissed on admission stage itself. Let a copy of this order be sent to law department of State of Bihar so that the abovestated ambiguity could be removed by the competent authority.