
(2006) 11 PAT CK 0090
In the Patna High Court

Md. Shabir

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 09-11-2006

Acts Referred:

Citation : (2007) CriLJ 620 : (2007) 1 PLJR 392

Hon'ble Judges : S.C. Jha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.C. Jha, J.—Heard.

2. This is an application for quashing the order dated 29-7-2003 passed by Sri Alok Raj, Judicial Magistrate, 1st class, Aurangabad, in Complaint Case No. 851/2002 as also for quashing the order dated 28-2-2006 passed by Sri Kishori Ram, Additional Sessions Judge-Fast Track Court No. 5, Aurangabad, in Cr. Revision No. 115/2003/13/2005 by which he has affirmed the order dated 29-7-2003 dismissing the complaint petition.

3. A police case had been instituted bearing Haspura P.S. Case No. 23/2000 against O.P. Nos. 2 to 17 under various Sections of Indian Penal Code and after investigation, the Investigating Officer submitted Final Form against the accused persons. The learned Magistrate after examining the complainant's witnesses dismissed the complaint petition by the impugned order.

4. As per allegation, all the accused persons in the complaint petition abused the complainant and assaulted him with Lathi and Bhala. When the family members of the complainant intervened, the accused persons managed to escape and the complainant entered into his house. Thereafter, accused persons pelted stones and brickbatted. Such occurrence took place as the movement of a Truck loaded with leather was obstructed by the informant.

5. Contention has been advanced on behalf of the petitioner that the complaint

was filed and in spite of corroboration of facts by several witnesses, the complaint petition was dismissed by taking a few lines hither and thither from the statements of the witnesses and decided the matter as final trial Court. Learned Magistrate should not have acted as final trial Court, rather only to see whether there was any material to proceed with the case on the basis of the statements of the complainant on oath and the witnesses of the complainant. According to the learned Counsel for the petitioner, the answer is given in the affirmative in view of the fact that all the witnesses have supported the occurrence and that meticulous examination of their evidence is not at all required at this stage. Even the Revisional Court vide order dated 28-2-2006 passed in Cr. Revision No. 115/2003/13/2005 has not considered such aspect of this case and dismissed the same, when it has come that the accused persons have committed the offence, as alleged.

6. Learned Additional Public Prosecutor appearing on behalf of the State has also not controverted the aforesaid submission of the learned Counsel for the petitioner and he in all fairness has submitted that there are materials, which could be said to be sufficient ground for the proceeding and so, such case should not have been dismissed by appreciating the evidence and weighing in the manner as if it was in the final stage of the trial. Contradiction or omission should not have been taken into account for the purpose of dismissal of the complaint petition, as further submitted.

7. Having considered the facts and circumstances and other materials, corroboration of the allegation as stated in the complaint petition by the complainant himself and other witnesses so produced on his behalf during course of enquiry, I do hold that there appears sufficient ground for proceeding to warrant trial of the accused persons cited in the complaint petition. So, the impugned orders require interference, which cannot be sustained on law and facts.

8. In the result, this application is allowed. The impugned order dated 29-7-2003 passed by the learned Judicial Magistrate as also the order dated 28-2-2006 passed by the Additional Sessions Judge-Fast Track Court No. 5 in Cr. Revision No. 115/2003/13/2005 are hereby quashed. Learned Magistrate is directed to pass orders in accordance with law after holding further enquiry.