

(2007) 01 PAT CK 0167

In the Patna High Court

Case No : Criminal Miscellaneous No. 30277 of 2006

Mukti Narayan Rai @ Mukti Rai

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 09-01-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 323, 341

Citation : (2007) 4 PLJR 439

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Advocate : Uma Kant Shukla and Rajesh Ranjan, for the Appellant; Niraj Kumar for the O.P. No. 2 and Mr. , Assistant Public Prosecutor for the State, for the Respondent

Judgement

Sheema Ali Khan, J.—Heard the counsel for the petitioner and counsel appearing on behalf of the opposite parties. This application has been filed challenging the order dated 26.6.2006 passed by the Chief Judicial Magistrate, Motihari in which he has taken cognizance under Sections 341 and 323 of the Indian Penal Code and 3(1)(x) of the S.C./S.T. Prevention of Atrocities Act in Hajipur P.S. Case No. 154/05.

2. The facts of the case are that a complaint case was filed on 4.8.2005 by the informant, Vishwanath Paswan for an occurrence which is said to have been taken on 31.7.05.

3. In the said petition, it has been alleged that on the date of occurrence i.e., 31.7.05 several persons including the petitioner came armed with Lathi, Bhala and assaulted the informant and others and abused the informant's wife and it is alleged that some of them took away a box of clothes and Hasuli. It is also alleged that they insulted the informant and his family by calling them "Chamar".

4. In this case, cognizance has been taken by the Chief Judicial Magistrate. Motihari.

5. A complaint case was lodged by the petitioner prior to the F.I.R. aforesaid which is annexure-4 to this petition, in which it has been alleged that on 31.7.05 the petitioner was getting hand pump installed on plot Nos. 4510 and 4536. In the meantime, Vishwanath Paswan, Jay Chandra Paswan and others came variously armed and asked the complainant i.e., Mukti Narayan Rai @ Mukti Rai (petitioner) not to install the hand pump on the land and wanted the hand pump to be installed on his part on the land. It is also alleged that they took away a watch worth Rs. 600/-.

6. In this case also cognizance has been taken with respect to the offences under Sections 147, 148, 149, 323, 504, 379 and 447 of the Indian Penal Code.

7. Thereafter, Vishwanath Paswan on 1.8.2005 filed an application before the District Welfare Officer, Motihari in which he has stated that on 31.7.2005 at 9.00 A.M. some persons have come and had created law and order problem with respect to installing the hand pump. This application before the District Welfare Officer led to a proceeding u/s 107 of the Code of Criminal Procedure for maintaining of the law and order on 23.8.05.

8. The complaint petition, in which cognizance has been taken and which has been challenged in this court is annexure-1, Vishwanath Paswan is the informant of the case and he has filed a complaint petition under Sections 341, 323, 379 and 34 of the Indian Penal Code implicating the petitioner and another person as accused in this case. The case has been filed before the Investigating Officer of Scheduled Caste and Scheduled Tribe Police Station at Hajipur at Vaishali. The date of occurrence of the said complaint petition is 31.7.05 and the accused persons are the same as those persons who are accused in complaint case No. 1651/2005. The allegations in the First Information Report is that the petitioner alongwith others came upon Plot No. 4536 measuring 1 Katha 13 Dhoor in which a water hand pump was to be installed by the State Government.

9. The complainant is said to have stopped the petitioner and others from installing the water hand pump claiming that the land belonged to them, when the petitioner and others were stopped by the informant then it is said that this petitioner is said to have abused the informant and others calling them "Chamar".

10. On these facts and circumstances, the court below has taken cognizance for the offence aforesaid. The petitioner has submitted that firstly the informant, Vishwanath Paswan has already instituted a proceeding regarding the same occurrence before the District Welfare Officer, Motihari and had also filed complaint case vide annexure-5 on 6.8.05. The date of occurrence of the First Information Report is 31.7.05 which is same date for which a complaint petition was filed by him and in that complaint petition he has not mentioned the fact that the occurrence had taken place due to instalment of the Hand Pump. The accused persons are common and all the four applications filed by Vishwanath Paswan on different occasions by the informant and the petitioner is accused in all the cases.

11. Surprisingly the First Information Report which has been instituted has been done on 22.8.05 i.e., after the complaint case No. 1661/2005 which was instituted on 4.8.05 and that too after a delay and without discussing the fact that earlier cases are pending with respect to the same occurrence before different courts. Thus there are three cases and one proceeding u/s 107 Cr. P.C. for the same occurrence. The informant, Vishwanath Paswan, filed a complaint petition No. 1651/2005 before the Chief Judicial Magistrate, Motihari whereas the First Information Report has been lodged at Hajipur in the district of Vaishali. The very fact that the occurrence took place in Motihari and the First Information Report has been lodged at Hajipur discloses that the case was instituted with malicious intentions of prosecuting the petitioner for the same offence for which already a case is pending and in which cognizance has also been taken. Repeated institution of case regarding the same offence is a misuse of process of law and it is apparent that it has been done with the malicious intention of either grabbing the land and also as a counter blast to the case filed by the petitioner on 4.8.05 (complaint case No. 1619/2005). Such type of malicious prosecution and misuse of law should not be allowed to continue.

12. For the aforesaid propositions, I may refer to the case of Bhajan Lal reported in 1992 S.C. page 604.

13. I may also refer to the case reported in T.T. Antony Vs. State of Kerala and Others, and State of Kerala and Others vs. Revada Chandrasekhar & Others in which the Apex Court has held "there can be no second F.I.R. and consequently no fresh investigation on receipt of every subsequent information in respect to same cognizable offences."

14. In the present case the principle of Antony's case supra will apply to the extent that a complaint had been lodged for the occurrence vide Complaint Case No. 1651/05 on 6.8.05 and for the same occurrence an F.I.R. was lodged at a different police state (sic-station?) and District Town. The Apex Court has held that the lodging of two cases for the same occurrence would not be in conformity with the scheme of the Code of Criminal Procedure. In the result, I find that the institution of the First Information Report amounts to malicious prosecution and is not in conformity of the scheme of Code of Criminal Procedure, the order of cognizance dated 26.6.06 passed in Hajipur P.S. Case No. 154/05 is quashed so far as it concerns the petitioner, Mukti Narayan Rai & (sic ?) Muktt Rai.