
(2010) 04 PAT CK 0026

In the Patna High Court

Munna Kumar and Others

APPELLANT

Vs

The State of Bihar and Rajeshwar Prasad Yadav

RESPONDENT

Date of Decision : 22-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 323, 379, 436

Citation : (2010) 04 PAT CK 0026

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—Despite filing of vakalatnama on behalf of opposite party No. 2, when the case was taken up for hearing on 21.4.2010, none appeared on behalf of opposite party No. 2. It was partly heard on 21.4.2010 and thereafter, the case was fixed to 22.4.2010 for further hearing. Today again, none has come forward to defend the opposite party No. 2.

2. Five petitioners, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, have prayed for quashing of entire criminal proceeding in Tr. No. 892 of 1999 (Case No. I530C/98) including order dated 23.4.1999 passed by Shri J. Tripathi, Judicial Magistrate, Bettiah. By the said order dated 23.4.1999, the learned Magistrate has taken cognizance for the offences under Sections 436, 323 and 379 of the Indian Penal Code.

3. Short fact of the case is that the opposite party No. 2 filed a complaint alleging therein that accused persons assaulted the complainant and also set on fire huts of the complainant. It was further alleged that during the said occurrence, some properties were also stolen by the accused persons. It was alleged that due to fire, which was set by accused persons, the complainant suffered loss for an amount of Rs. 36,050/- (the amount of destroyed house hold articles) and Rs. 15,000/-, since in the said fire, their cloths and ornaments were destroyed. After filing of the complaint petition, the complainant was examined

on S.A. and in support of complainant's case, five witnesses were examined. After perusing the complaint petition as well as examining evidence brought on record, the learned Judicial Magistrate by order dated 23.4.1999 took cognizance for the offences as mentioned above.

4. Shri Umakant Shukla, learned Counsel appearing on behalf of the petitioners, at the very outset, submits that the complaint petition was falsely and maliciously filed by the complainant. He submits that the complaint petition was filed solely with an object to put pressure on the petitioners since the petitioners were decree holders for the land in question and after the suit was decreed in favour of the petitioners, warrant for delivery of possession was also issued by the concerned court. Learned Counsel, by referring to Annexure-2 to the petition, as well as, by way of producing certified copy of Annexure-2 (let it be kept on record), submits that the report of the delivery of possession itself makes it clear that possession over the land in question was handed over to the petitioners and the learned Executive Magistrate, who was one of the members of the team for executing the warrant for delivery of possession himself, had made an endorsement that on 13.11.1998, delivery of possession was handed over to the decree holder i.e. petitioners and after the delivery of possession was effected, one of the female member of the family of the complainant herself sprinkled kerosene oil on two huts and thereafter, set the two huts on fire. He has placed page-17 of the brief, which is a report prepared by one Shri Jay Shankar Pathak, Executive Magistrate, Narkatiaganj. This fact was also corroborated by the Officer-in-charge of the concerned police station, which appears at pages 17 and 18 of the brief.

5. Learned Counsel for the petitioners has argued that in respect of land in question, the description of which was given in the complaint petition, the petitioners had filed a title suit vide Title Suit No. 128 of 1991 and on contest, the suit was decreed in favour of petitioners. After the decree was prepared, an execution case was also filed vide Execution Case No. 4 of 1998. In the said execution case, warrant of delivery of possession was issued by the learned Munsif on 2.11.1998 and thereafter, learned Executive Magistrate was deputed for execution of the warrant of delivery of possession. Subsequently, on 13.11.1998, delivery of possession was affected and possession over the land was handed over to the petitioners. After the possession was delivered to the petitioners with a view to falsely implicate the petitioners, one of the female inmates of the informant set on fire two huts over the land in question with an oblique motive particularly with a view to start false prosecution against the petitioners. As a result, the present complaint petition was filed by opposite party No. 2.

6. Besides, hearing learned Counsel for the petitioners, I have also examined materials available on record as well as certified copy of the report in respect of execution of warrant of delivery of possession. On perusal of the materials available on record including certified copy of the execution report, I am satisfied

that the complaint petition was falsely filed by the opposite party No. 2 only with a view to harass the petitioners since the opposite party No. 2 had already lost his battle in the Civil Court. I am of the view that in such situation, it would not be appropriate to allow the complainant to abuse the process of the court by way of proceeding with such complaint petition. Accordingly, for the ends of justice as well as to prevent abuse of the process of the court, I am satisfied that the present case comes within the category of exceptional cases and as such by exercising inherent power u/s 482 of the Cr. P.C., I set aside the entire proceeding in Complaint Case No. 1530C of 1998 as well as order of cognizance dated 23.4.1999 passed by Shri J. Tripathi, Judicial Magistrate, Bectiah.

7. Accordingly, the petition stands allowed.