

(2010) 08 PAT CK 0048

In the Patna High Court

Nabab Ali, Sudhakar Pandey and Umesh Kumar Modi

APPELLANT

Vs

The State of Bihar and Raj Kishore Singh

RESPONDENT

Date of Decision : 25-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 482
Penal Code, 1860 (IPC) — Section 323, 341, 386

Citation : (2010) 08 PAT CK 0048

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—Three petitioners, who were at the relevant time Public Relation Officer, Foreman and Managing Director respectively in the Modi Industries Ltd., Modi Nagar, Gaziabad (U.P) have come before this Court , while invoking its inherent jurisdiction u/s 482 of the Code of Criminal Procedure, with a prayer to quash the entire proceeding of Complaint Case No. 1076 of 2001 including the order dated 26.9.2001 passed by Sri S.C. Pathak, Judicial Magistrate, 1st Class, Siwan. By order dated 26.9.2001, the learned Magistrate has taken cognizance of offences under Sections 323, 341 and 386 of the Indian Penal Code against the petitioners.

2. Short fact of the case is that Opp. Party No. 2 filed a complaint in the court of the learned Chief Judicial Magistrate, Siwan, which was numbered as Complaint Case No. 1076 of 2001. In the complaint petition, it was disclosed that the complainant was working as Welder Gas Cutter in the Modi Steels Industries Ltd. Modi Nagar, Gaziabad (U.P.) (hereinafter referred to as 'the Company') from 1975 to 1993 continuously. However, with effect from 23rd January 1993 the Company was closed and thereafter he returned back to his native place at Bihar and started living there. It was disclosed that on the date of occurrence, i.e. on 18.8.2001 the aforesaid accused persons arrived at the door of the complainant on a Marshall Vehicle. After noticing their arrival, the complainant allowed them

to come inside the house and only thereafter accused persons told the complainant that he will get the entire dues if he puts his signature on different papers. It was asserted in the complaint petition that the complainant asked to first make payment and only thereafter he would put his signature. Thereafter petitioner No. 2 put a pistol on the temporal region of the complainant and by force and threat accused persons obtained signature of the complainant over 10-11 blank papers. Accused persons after abusing and giving threat to kill the complainant fled away having seen the witnesses. After filing of the complaint petition, the complainant was examined on S.A. and in support of the complaint case, witnesses were also examined during the enquiry and thereafter by the impugned order dated 26.9.2001, the learned Magistrate took cognizance of offences under Sections 323, 341 and 386 of the Indian Penal Code.

3. Aggrieved with the order of cognizance, the petitioners approached this Court by filing the present petition. On 24.9.2002 while issuing notice to Opp. Party No. 2, this Court had directed that as an interim measure further proceedings before the trial court shall remain stayed until further orders of this Court. Subsequently, on 16.2.2004, the petition was admitted for hearing and it was directed that during the pendency of this application interim order passed on 24.9.2002 shall remain operative. The order of stay is still continuing.

4. Despite service of notice, Opp. Party No. 2 has preferred not to appear before this Court in the present case.

5. Sri Ram Balak Mahto, learned Senior Counsel appearing on behalf of the petitioners, while challenging the order of cognizance, at the very outset submits that the complaint petition was liable to be rejected on the basis of averment made in the complaint petition itself. It was submitted that the allegation made in the complaint petition was not probable. It was further submitted that the present complaint petition was filed maliciously by Opp. Party No. 2. Opp. Party No. 2 himself had admitted that he was working in the Company and it was closed in the year 1993. Learned Senior Counsel for the petitioners has referred to several documents, which were brought on record along with the present petition. It was submitted that after closure of the Industries, the complainant, time without number, had represented before the authorities with a prayer to direct the Company to make payment, which were due since long. While referring to Annexure-1 to the petition, it has been submitted that the complainant had even threatened to commit suicide. Learned Senior Counsel for the petitioners has also referred to Annexure-6B to the petition, which is at pages 33 and 34 of the brief. While referring to Annexure-6B to the petition, it was submitted that the gratuity amount, wages and closure compensation amount was already paid to the complainant on 5.11.2000 itself. While referring to number of documents it has also been submitted that despite closure of the industries, the complainant was unauthorisedly occupying the quarter, which was allotted to him by the Company and since Opp. Party No. 2 was being asked to vacate the quarter, the present complaint petition was maliciously filed by Opp.

Party No. 2. It was further submitted that for committing trivial offence it was not expected that the Managing Director of the Company i.e. petitioner No. 3, who is resident of New Delhi, would have visited the native village of the complainant i.e. Siwan for obtaining his signature as alleged by Opp. Party No. 2. Accordingly, it has been submitted that complaint petition was liable to be rejected on the ground of non-probability of commission of such offence as well as on the ground that it was maliciously filed. However, the learned Magistrate in the mechanical manner has passed the impugned order.

6. I have heard Smt. Indua Bala Pandey , learned Addl.Public Prosecutor appearing on behalf of the State.

7. Besides hearing learned Counsel for the parties I have also perused the materials available on record. The Court is conscious that while hearing a petition u/s 482 of the Code of Criminal Procedure, it is not required to examine all the documents enclosed with the petition unless the same is proved through process of law, but in view of peculiar facts and circumstances of the present case, I have perused the same. From the records, it appears rather it has been admitted by the complainant in his complaint petition that he was employee of the said Company and he had left the work from 1993, since the Company was closed. It also appears that from time to time the complainant was raising dispute against the Company, particularly against petitioner Nos.1 and 2. Earlier, a complaint was filed by Opp. Party No. 2 in the court of learned Addl. Chief Judicial Magistrate, Gaziabad , which was numbered as Case No. 29 of 2000. In that complaint, he had impleaded petitioner Nos.1 and 2 as Opp. Parties. The said petition was filed with a prayer to get the matter registered and investigated u/s 156(3) of the Code of Criminal Procedure. The said order has been brought on record as Annexure-7 to the present petition. It further appears that the said petition was referred to the police for conducting an enquiry and thereafter a report was submitted by the Modi Nagar (Gaziabad) Police Station, which indicates that allegations were completely incorrect. The said report is at Annexure-7A at pages 41 to 44 of the brief. This shows that Opp. Party No. 2 since long was raising dispute against the petitioners. Keeping in view the aforesaid circumstances, the Court is satisfied that the complaint petition was filed maliciously and with oblique motive. Moreover, on perusal of complaint petition, the Court is satisfied that the allegations appears to unbelievable and not probable.

8. Accordingly, the Court is of the opinion that it is a fit case for exercising inherent jurisdiction in favour of the petitioners and, as such, the order of cognizance dated 26.9.2001 passed by Sri S.C. Pathak, the learned Judicial Magistrate, 1st Class, Siwan in Complaint Case No. 1076 of 2001 is hereby set aside and the petition stands allowed.