
(2013) 07 PAT CK 0119

In the Patna High Court

Case No : Criminal Miscellaneous No. 34069 of 2012

Nand Kishore Singh @ Naku Singh @ Nand Kishore Sharma APPELLANT
Vs

State of Bihar RESPONDENT

Date of Decision : 05-07-2013

Acts Referred:

Citation : (2013) 4 BLJud 70

Hon'ble Judges : Gopal Prasad, J.

Bench : Single Bench

Advocate : Mr. Murari Narayan Choudhary, Mr. Vijay Kumar and Mohit Shrivastava, Advocates, for the Petitioner; Mr. Mani Madhukar, Mr. Ganpati Trivedi, Advocates, for the Opposite Party

Final Decision : Allowed

Judgement

Gopal Prasad, J. (Oral)—This is a petition for quashing the order dated 30.06.2012, passed by the Judicial Magistrate, Chapra, in T. R. No. 316 of 2012, arising out of Complaint Case No. 3814 of 2007 by which the petition under Section 245 Cr.P.C for discharge the petitioners.

2. The prosecution case for which a Complaint petition was lodged by the informant Chandrika Singh that the land wherein Khata No. 306, Plot no. 1319 and area of 1 Bigha, 19 Katha, 11 dhur is the ancestral land of the complainant and there was a mango orchard in the aforesaid plot. It is alleged that the petitioners along with 4 or 5 unknown persons on 1.11.2007 at 8 P.M were cutting the mango tree. On hearing the sound of cutting of the tree the informant came and protest but the accused persons abused and assaulted him and take away the wood of mango tree worth Rs. 5000/- thereafter cognizance taken place.

3. On the complaint the complainant and witnesses examined on oath and taking into consideration the statement of complainant, witnesses the process issued after taking cognizance.

4. The order taking cognizance was challenged before the Hon"ble High Court in Cr. Misc. No. 40188 of 2008, however, the case was withdrawn by order dated 16.12.2011 with an observation that he may raise the issue at the stage of discharge. The petitioner raised all the issues at the stage of the framing of charge before the trial Court for discharge but the same was rejected on the ground that land recorded in the name of Mahanth Raghunath Das. The defence has not produced any document to indicate that the land is trust property. The title suit has not been decided hence the offence under section 379 of the I.P.C. is made out as there are prima-facie material for the same in the case diary.

5. The learned counsel for the petitioner submits that the allegations made in the complaint are inherently improbable and manifestly abused. The entire prosecution case are false and concocted version, malicious with ulterior motive to wreck vengeance to spit on the face. It is further asserted that in the complaint the complainant claim the land as ancestral but the khatian shows the land recorded in the name of Mahanth Raghunath Das Chela of Amar Das Bairagi. It is asserted that land belong to Ram Janki Temple trust. The property came in succession to surviving last chela Ragho Das. After him the property managed by villagers for the trust. In the meantime antisocial elements started claiming the land of trust by forging document of title by executing sale deed. The matter brought to the notice of Religious Trust Board. The Bihar Religious Trust Board registered the trust with registration number 3662 took the management of trust and appointed petitioner as the President of the trust committee. The steps were taken for taking step against person for illegal activity against the trust property. The petitioner with the permission of the Administrator Cum Special Officer of the Bihar Religious Trust Board brought title suit no. 446 of 2006 on 24.11.2006 for declaration of sale deed executed as void against the complainant as defendant in the suit. The petitioner joined with other including the Administrator Cum Special Officer of Bihar Religious Trust Board as the plaintiffs. The President of the Trust Committee instituted a criminal case for theft of idol of the Mandir in trust, and police after investigation of the said case submitted charge sheet for offence u/s 379 of the I.P.C. against the complainant on 30.11.2007 in Derni P.S. Case No. 40/2007 dated 15.5.2007. This led to the filing of the criminal case against the petitioner & other. The complaint shows the date of occurrence as 1.11.2002 but the complaint has been filed on 1.12.2007 without any explanation for delay or not moving the police for lodging the F.I.R. indicates the ulterior motive.

6. The learned counsel for O.P. No.2 though notice sent, his name appearing in the daily cause list did not chose to appear. The learned counsel for the O.P. no.3 the Chairman Bihar State Religious Board appeared and supported the contention of the learned counsel for the petitioner and asserted of his appointment as a President of the Religious Trust Committee and filing the suit with Chairman of Religious Trust Board and asserted that it is civil litigation between the parties.

7. However, the submission made by the learned counsel for the petitioner is

based on certain document filed before this Court and the submission made is apparently the defence of the accused. However, it is well settled that the trial court at the stage of framing of the charge cannot consider any material filed by the accused nor can look into the defence of the accused. The trial court at this stage of framing charge required to see whether the uncontroverted allegation as made makes out an offence and the defence of the accused cannot be looked into or even put forth. The hearing of the accused at this stage only on the material on record at this stage produced by the prosecution. However, while exercising jurisdiction u/s 482 of the Cr.P.C. in the interest of justice if the accused produced the document or material of unimpeachable character of sterling quality the power of High Court is unlimited where in the interest of justice the High Court can make such order as maybe necessary to prevent the abuse of the process of the Court within the parameters laid in Bhajan Lal case reported in 1992 (1) Supp. SCC 335. The reliance placed on 2005 (1) SCC 568 State of Orissa v. Debendra Nath Padhi.

8. However it is settled principle that inherent power to be exercised sparingly carefully with great caution based on sound principle of law, for the advancement of justice. The Court may take into consideration the special feature in the interest of justice. 2007 (12) SCC 1 Indramohan Goswamy.

9. However reverting back to allegation made in Complaint petition that the occurrence took place at 8 PM. The complainant heard the sounding of cutting the tree he came to place of occurrence saw the petitioner along with 4, 5 person cutting the tree with axe and saw. On protest he was abused and assaulted, on hulla the witness came then accused persons fled away with the wood cut by them worth Rs. 5000/-. However this court at this stage cannot go into question about truth of allegation whether allegation are true or false. However the nature the allegation are general and omnibus without any specific role attributed to the petitioner. The occurrence alleged to occur on 1.11.2007 but the complainant filed on 1.12.2007 after one month still there is no explanation for the delay. There is no averment in the complaint that why the accused petitioner not informs the police but choose to file complaint at belated stage had their allegation bona fide. However it is true that the delay in lodging the case and non explanation of delay to move the police is no ground for quashing the proceeding but it has a bearing for consideration of absurdity of the allegation and improbability of the occurrence. However taking into consideration the allegation it is apparent that the occurrence took place in short span of time that complainant came on sound of cutting the tree. The complainant protested then accused person assaulted. The witnesses came out on hulla then the accused person fled away with wood worth Rs. 5000/-, but no details of occurrence has been given in complaint. The case instituted on complaint with due deliberation on the advice of an advocate but the allegation are general omnibus without any specific detail about the specific act of commission or omission nor the detail how the accused person took the wood. Hence the manner of alleged occurrence in short span is not possible hence the allegation are not only general and omnibus

but also inherently improbable and manifestly absurd.

10. However the prosecution case that the land is ancestral land of the complainant. It has been recorded in Khatian in the name of Mahanth Raghunath Das with reference to Mathia. The trial court in its order mentioned that the complainant placed reliance on this document but did not go into question how the complainant is claiming the land as his ancestral land. The petitioner has produced document to show that the Bihar Religious Trust Board has registered the Ram Janki Trust and has constituted the committee for management of the trust property with the petitioner as President. The petitioner having taken step for saving the property from unscrupulous person and even filed suit along with Administrator cum special officer and Chairman of Bihar Hindu Religious Trust Board with other as plaintiff bearing title suit no. 449 of 2006 for declaration that the sale deed executed by in favour of other person is void on 24.11.2006 in which the complainant is the defendant and the plaint is Annexure-5. The treasurer of the Committee filed case with regard to the theft of the Idol of the trust Mandir in which the police after investigation filed charge sheet against the complainant Chandrika Singh and witness in complaint Dasai Rai. The charge sheet filed on 30.11.2007 in connection with Darni P.S. Case No. 40/2007 dated 15.6.2007. The charge sheet is Annexure-8, which is an impeachable document.

11. Hence the document relied by the defence are the revisional survey khatian, Annexure-3. The certificate of religious trust Board dated 22.2.2006 Annexure 4, the plaint of title suit 446/2007 Annexure 5, the charge sheet submitted by the police is Annexure-8. These are document having come into existence also prior to the filing of the complaint and are document of unimpeachable character. From these documents it is apparent that both the parties are in civil as well as criminal litigation with regard to the property claimed to be property of trust running in the name of Mahanth Raghunath Das in which the complainant is a defendant in suit and charge sheet submitted against him for theft of the Idol of the temple made of anent Asthdhatu for offence u/s 379 of the I.P.C. The charge sheet submitted on 30.11.2007. Thereafter the complaint filed on 1.12.2007 alleging the occurrence of 1.11.2007.

12. However the lodging the complaint case in this background by the complainant, the question for consideration is whether this Court is required to exercise jurisdiction under the inherent power u/s 482 of the Code in the facts and circumstances of this case.

13. However it is well settled that inherent power is meant to do an exdebitio justitiae to do real and substantial justice to prevent the abuse of the court in the interest of justice.

14. However it is not a case of theft of tree by unscrupulous person but the parties are on litigation since before the date of occurrence both civil and criminal litigation. The complainant petitioners are claiming the land. The said land is recorded in the name of Mahanth Raghunath Das and in this background

the case has been filed which shows that the allegation made in complaint are inherently improbable and manifestly absurd. The case filed after the filing of suit and submission of charge sheet for offence u/s 379/34 against the complainant. Hence apparently has been filed maliciously with ulterior motive to wreck vengeance to spit on the face of the petitioner with intention to harass the petitioner. However allowing the prosecution to continue is allowing the unscrupulous person to abuse the process of the court leading to insurmountable harassment agony and pain to the petitioner. Hence, in the interest of justice allowing the prosecution to continue against the petitioner is abuse of the process of the court and hence the orders impugned annul proceeding against the petitioner is hereby quashed and the petition allowed.