
(2010) 03 PAT CK 0158
In the Patna High Court

Nunu Ram Das

APPELLANT

Vs

Kapileshwar Nath Verma

RESPONDENT

Date of Decision : 11-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 192, 205
Penal Code, 1860 (IPC) — Section 352, 500

Citation : (2010) 03 PAT CK 0158

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Judgement

Shiva Kirti Singh, J.—Heard learned Counsel for the petitioner and learned Counsel for the State. Although the name of learned Counsel for the complainant is appearing in the daily list, nobody has appeared on his behalf.

2. Petitioner is aggrieved by the cognizance taken against him under Sections 352 and 500 of the IPC by order dated 23.7.1997 passed by Mr. Jafar Imam, Judicial Magistrate, 1st Class, Patna in Complaint Case No. 528(c)/97, T.R. No. 1429/1997.

3. It has been submitted that at the relevant time petitioner was Secretary of Vidyalaya Sewa Board, Bihar and the complainant was lawyer of the said Board. Some inconvenience was caused to the complainant because of objection raised by the petitioner in respect of the bills of the complainant submitted by him for professional work. Allegedly his bill was not paid and sometime later he was removed from the panel of the lawyer for Vidyalaya Sewa Board. Thereafter, as per complaint petition, the accused-petitioner abused the complainant in the office premises by using some foul words as mentioned in paragraph-27 of the petition of complaint. Allegedly, an attempt was also made to assault the complainant but he managed to escape.

4. It has been submitted on behalf of the petitioner that the allegations of attempted assault or using foul language inside the office premises should not be believed when there is no independent witness to support the allegation. Further

submission is that since the acts complained of took place within the office premises when the petitioner was acting in colour of the office, sanction should have been obtained before prosecution. It has further been submitted that before taking cognizance the complainant was not examined on solemn affirmation and lastly it has been submitted that the complaint case has remained pending since 13 years and on this account also the petitioner has been sufficiently penalized and it would be very harsh for him to come from his village-home in Deoghar to attend to this Court at Patna after the petitioner has retired from service.

5. It would not be possible, in the facts of this case to disbelieve the allegations. Further for using foul language or attempting to assault, cover of office will not be available and sanction will not be required.

6. So far as alleged defect on account of non-examination of complainant on solemn affirmation is concerned, the order dated 3.7.1997 shows that the Magistrate before taking cognizance considered the evidence of three witnesses produced during enquiry and other materials available on record including statement of the complainant on solemn affirmation. As against this material in the impugned order showing that the statement of complainant on oath is available, in paragraph-11 of this application the petitioner has asserted that cognizance was taken without examining the complainant on oath. From the order-sheet annexed as Annexure-4 it is clear that on 4.6.1997 this case was before another Magistrate who transferred the case to the court of Sri Jafar Imam, Judicial Magistrate, 1st Class u/s 192(1) of the Cr.P.C. with a clear direction to examine the complainant and his witnesses on solemn affirmation before deciding to proceed further. The complainant was directed to appear before the concerned court on 6.6.1994 for solemn affirmation. Further order-sheet begins from 15.7.1997 according to which arguments were heard in respect of enquiry and the matter was posted for orders on 23.7.1997.

7. It appears very difficult to decide whether the complainant was examined on S.A. or not but since the order-sheet does not mention even about examination of other witnesses hence it appears that the witnesses as well as complainant were examined prior to 15.7.1997 and therefore the learned Magistrate has mentioned in his order dated 23.7.1997 that he has considered all the materials including statement of complainant and witnesses. In view of the nature of the order proposed it is not necessary to keep the matter pending to take a final decision in respect of aforesaid issue. The last submission advanced on behalf of the petitioner is that he has been sufficiently punished on account of pendency of such a complaint case against him for the last 13 years. This submission alone cannot be sufficient to quash the criminal case because the case has remained pending since 1998 before this Court and no progress could be made in the trial because of interim order passed on 3.8.1998. Hence, the delay cannot be attributed to the complainant or the prosecution.

8. In view of the aforesaid facts and discussions, this Court is not persuaded to interfere in the matter and hence this application is dismissed but the court

below is directed to check its records and if the complainant has not been examined on solemn affirmation then the impugned order of cognizance shall stand quashed with a liberty to the court below to proceed afresh in the matter after examining the complainant on S.A. Thereafter, considering that the case has remained pending for a long time and also the fact that the petitioner was, at the relevant time acting in his official capacity and he is said to have retired from his service by now, the court below shall grant him benefit of representation u/s 205 of the Cr.P.C. and shall take prompt steps to conclude the case expeditiously, preferably within six months.