
(2007) 09 PAT CK 0091

In the Patna High Court

Case No : Criminal Miscellaneous No. 45751 of 2006

Om Prakash Mahto

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 18-09-2007

Acts Referred:

Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961 — Section 15(1)
Criminal Procedure Code, 1973 (CrPC) — Section 197
Penal Code, 1860 (IPC) — Section 34, 379, 447

Citation : (2008) 2 PLJR 167

Hon'ble Judges : Mihir Kr. Jha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mihir Kr. Jha, J.—Heard Counsel for the parties. In this application, the petitioner seeks to assail the order, dated 18.8.2005 in Complaint Case No. 529 of 2004 whereby and whereunder the Court below has taken cognizance under Sections 447, 379/34 of the Indian Penal Code. The complaint as contained in Annexure-1 would bear it out that the complainant-Opposite Party No. 2 had basically made allegation against the petitioner, the Block Development Officer, that he in league with some of the Officers had got the wheat crop of the complainant removed and thereafter was also responsible in taking steps for construction of a community hall from the M.L.A. fund. It was, therefore, alleged by the complainant that the land which actually belonged to him being his khatiyani land, was trespassed at the instance of the petitioner and his other set of officers/employees and that such act of the petitioner constituted offences under Sections 447 and 379/34 of the Indian Penal Code.

2. Counsel for the petitioner has brought on record the notification, dated 21.6.2000 which goes to show that the plot which has been alleged to be trespassed in the complaint petition being plot No. 239, khata No. 7 in mouza Madhepura was the subject matter of a ceiling proceeding in which ultimately a

final notification u/s 15(1) of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act had been published in the District Gazette of Katihar on 30.6.2000 vide notification No. 222, dated 21.6.2000. From a perusal of the said notification, it is manifest that plot No. 239 was acquired by the State Government in terms of Section 15(1) of the Act. He further submits that Section 15(1) of the Act itself envisages that such acquisition of surplus land is final and the land described to be surplus therein vested in the State Government free from all encumbrances. It is, therefore, contended on behalf of the petitioner that when the decision was taken for construction of community hall and/or removal of crops over the land in question, the petitioner in exercise of his official duty, in respect of a Government land was also duly protected by the provision of Section 197 of the Code of Criminal Procedure inasmuch as a sanction had to be accorded by the State Government for his prosecution.

3. In this case noticing the aforementioned prima facie submission with regard to the impugned order of cognizance, this Court had issued notice to the complainant-Opposite Party No. 2 by order, dated 6.12.2006. The case thereafter was listed on 23.4.2007 after service of notice" but no counter affidavit has been filed in a period of more than eight months. Counsel for the Opposite Party No. 2, however, in the midst of the argument had made submission that he would now like to file a counter affidavit. Such prayer is not only being belated but also basically against the spirit of the notice issued by this Court giving time till the next date from 6.12.2006. Accordingly, the prayer for time to file counter affidavit is hereby rejected. This Court has now to proceed on the basis of the facts mentioned in the quashing application taking them to be admitted facts.

4. In view of the fact that the land in question whose trespass has been alleged by the complainant-Opposite Party No. 2 in the complaint petition had already vested in the State Government, there was no question of committing trespass by the petitioner, Block Development Officer when he or under his orders his subordinates had taken steps for construction of the community hall. Further such official act of the petitioner, Block Development Officer, with regard to doing a Government work is duly protected by the provision u/s 197 of the Code of Criminal Procedure and on the face of record when the complainant-Opposite Party No. 2 in his complaint petition in paragraph No. 10 has admitted that he did not seek prior sanction against the petitioner, his prosecution even otherwise is not sustainable in the eyes of law. Be that as it may, I am even otherwise satisfied that no offence is made out against the petitioner, Block Development Officer and consequently this application is allowed and the impugned order, dated 18.8.2005 is hereby quashed.