(2007) 02 PAT CK 0204

In the Patna High Court

Case No : Criminal Miscellaneous No. 10954 of 1998

Pankaj Kumar Vaidya APPELLANT

Vs

The State of Bihar and Another RESPONDENT

Date of Decision : 06-02-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 202, 482
Penal Code, 1860 (IPC) — Section 21, 323, 379, 504

Citation : (2007) 2 PLJR 576

Hon'ble Judges : Madhavendra Saran, J

Bench : Single Bench

Advocate : S.K. Verma and V.K. Verma, for the Appellant; Dhirendra Nath Jha for the Opp. Party No. 2 and Mr. Z. Azeem for the state, for the Respondent

Final Decision : Allowed

Judgement

Madhavendra Saran, J.—This application u/s 482 of the Code of Criminal Procedure (in short as the Code) has been filed for quashing the order dated 26.2.1998 passed in Complaint Case No. 467(C)/97 by Judicial Magistrate, Munger whereby and hereunder cognizance for offence punishable under Sections 323, 379 and 504 of the Indian Penal Code has been taken against the petitioner. It appears that on 18.8.1997 complainant/opposite party no. 2 Shiv Kumar Agrawal filed a petition of complaint against the petitioner in the Court of Chief Judicial Magistrate, Munger for an occurrence which had allegedly taken place on 16.8.1997. In the complaint petition, in short, it has been alleged that the complainant is an old customer of the Bank. He brought post parcel from Meerut through Indian Overseas Bank, intimation of which was given by the Bank vide Bill Investment Memo No. I.D.B. No. 13/97 upon which Rs. 100/- was mentioned as freight charge. The complainant received the above investment memo with objection on 27.6.1997 at 7.30 PM. He also made an endorsement on the peon book regarding freight charge imposed by the Bank. The complainant on 16.8.1997 along with his staff Mohan Kumar went to the Bank for taking delivery of the post parcel. Voucher for delivery of goods was prepared by the

Bank clerk Mirtunjai Prasad and payment accordingly was made as per the voucher. After deposit of freight charge, Mirtunjai Prasad was told by petitioner Pankaj Kumar Vaidya that godown charge has also to be collected from the complainant for which complainant made written objection. The complainant was asked to deposit Rs. 94/- in cash as godwon charge. The complainant asked them to show the relevant rules or circular in that regard but no such rule or circular was shown to him. The complainant thereafter deposited Rs. 94/- and after taking delivery of post parcel he handed over the same to his staff Mohan Kumar. The complainant then submitted an application in the Bank against the behaviour of the petitioner. The petitioner got excited and used unparliamentarily language and also snatched hand bag from the hand of the complainant which contained Rs. 566/-, bill and receipt of post parcel and some other papers. The petitioner also misbehaved and ousted the complainant and threatened that he shall make him handicapped by leg also.

2. It appears that the complainant was examined on solemn affirmation and during enquiry u/s 202 of the Code one witness was examined and the learned Magistrate after being satisfied that there was sufficient material to proceed further against the petitioner, took cognizance under Sections 323, 379 and 504 of the Indian Penal Code. Against the said order of cognizance dated 26.2.1998 the petitioner has preferred the present application for quashing before this Court.

3. It is the contention of learned counsel that at the time of alleged occurrence, petitioner was functioning as Deputy Manager in the Indian Overseas Bank, Munger. He is a public servant not removable from his office save by or with the sanction of the competent authority within the meaning of Section 197 of the Code. In support of his submission, learned counsel placed reliance on a decision given in the case of Union of India and Anr. vs. Ashok Kumar Mitra, reported in 1995 Cr.L.J. 3633 to say that the employee of nationalized bank is a "public servant" within the meaning of Section 21 of Indian Penal Code.

4. It is admitted position that at the relevant time, the petitioner was working as Deputy Manager in the Munger Branch of Indian Overseas Bank. The Apex Court in the above decision at paragraph-10 has observed as follows:

"10. On a plain reading of the above provisions, it follows that the view of the Calcutta High Court in the impugned judgment holding that the Branch Manager of Bank of India is not a ''public servant'' u/s 21 of IPC is erroneous and cannot be sustained."

5. In view of such observation of the Apex Court it has to be accepted that at the relevant time petitioner was a public servant within the meaning of Section 21 of the Indian Penal Code.

6. It is further admitted that the alleged occurrence took place at 1.00 PM in the bank premises. When a public servant is charged for an offence, whether sanction is or is not necessary is to be assessed with reference to the allegations

made in the complaint. If the acts complained of are inseparably connected with the duties attached to the office, sanction would be necessary. In other words u/s 197 of the Code there must be a reasonable connection with the act and discharge of official duty. From the allegations made in the petition of complaint it is clear that there was reasonable connection between the act complained of and the official duty which the petitioner was performing at the time of alleged occurrence. The question whether in discharging his official duty the petitioner acted somewhat in excess of his limits is not material.

7. In the above facts and circumstances, in my considered opinion, sanction u/s 197 of the Code would be required. Cognizance in the present case has been taken without sanction and so the same is illegal. In the above facts and circumstances, this application is allowed and the impugned order of cognizance dated 26.2.1998 is hereby quashed.