
(2018) 05 PAT CK 0025

In the Patna High Court

Case No : Criminal Miscellaneous No.35460 of 2013

Paramhans Tiwary & Ors.

APPELLANT

Vs

State of Bihar & Anr

RESPONDENT

Date of Decision : 09-05-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 245, 482

Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 — Section 3(i)(x)(xi)

Indian Penal Code, 1860 — Section 34, 323, 380, 504

Citation : (2018) 05 PAT CK 0025

Hon'ble Judges : SANJAY PRIYA

Bench : Single Bench

Advocate : Sanjay Kumar, Mayanand Jha, Sanjeev Kumar

Final Decision : Allowed

Judgement

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 30.05.2013 passed by the Judicial

Magistrate, Bettiah, in Trial No.166 of 2013 arising out of Complaint Case No.2408-C of 2010 by which the learned Magistrate has rejected the

application filed by Petitioners under Section 245 Cr. P.C. for their discharge.

2. Case of the Complainant is that the Petitioners used to take work from the Complainant and his forefather for the last 20-25 years as labourers

without giving proper wages. The Complainant-Opposite Party No.2 worked till 2009 and thereafter left the work of the Petitioners. On 14.03.2010,

the Petitioners came at the door of the Complainant and abused by taking his caste name and threatened to demolish Indira Awaas of the

Complainant. The Petitioners, again, arrived on 19.08.2010 variously armed and surrounded the house of Opposite Party No.2 (Complainant). They

assaulted him with lathi, fists, slaps and looted several articles worth Rs.30,000/-.

3. Heard learned counsel for the Petitioners and learned APP for the State as well as counsel for the Opposite Party No.2.

4. Counsel for the Petitioners has submitted that, initially, complaint was filed under Section 3(i)(x)(xi) of the Scheduled Castes and Scheduled Tribes

(Prevention of Atrocities) Act along with offences of Indian Penal Code, but the Trial Court disbelieved the allegation alleged under the Scheduled

Castes and Scheduled Tribes (Prevention of Atrocities) Act. There is land dispute between the parties on account of which this false case has been

filed by the Complainant. The Petitioners have filed Title Suit No.153 of 2010, which is pending in the Court of Munsif, Bettiah, West Champaran, in

which family members of the Opposite Party No.2-Complainant as well as witnesses of the present case are defendants. The Opposite Party No.2

has filed present Complaint only with a view to grab the land, which is subject matter of Title suit.

5. Learned counsel for the Opposite Party No.2 has submitted that the Court below after looking into the evidence before Charge has rejected the

petition filed on behalf of the Petitioners under Section 245 Cr. P. C.

6. Learned APP has submitted that there is no illegality in the impugned order.

7. This Court after looking into the allegation in the Complaint Petition and the impugned order finds that Petitioners have filed Title Suit No.153 of

2010, which is pending in the Court of Munsif, Bettiah, West Champaran. The family members of the Opposite Party No.2 as well as witnesses of the

present case are defendants in the suit. Plaint of the aforesaid Title Suit has been enclosed as Annexure-3 with this petition. The Complainant has

levelled allegation against the Petitioners that on 19.08.2010 the Petitioners variously armed surrounded the house of Opposite Party No.2

(Complainant) and assaulted him with lathi, fists, slaps and looted several articles worth Rs.30,000/-

8. The Court below in the impugned order has mentioned that prima facie case was found for the offence under Section(s) 323, 504, 380/34 Indian

Penal Code by order dated 24.05.2010. The witnesses have stated in their evidence before Charge that these Petitioners after entering into the house

looted away articles worth Rs.30,000/-. Thereafter, Court below has rejected the petition filed under Section 245 Cr. P. C.

9. Section 245 (1) Cr. P. C. speaks If, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded,

that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

10. In the instant case, from the Complaint Petition itself, it appears that mere vague allegation has been made by the Complainant against the accused

persons that they arrived in the house of the Complainant and committed Maarpeet and also looted away articles.

11. From the impugned order, it appears that mere vague statement has been made by the witnesses in their evidence before Charge. It is admitted

position that Petitioners have filed Title Suit No.153 of 2010, which is pending in the Court of Munsif, Bettiah, West Champaran, in which family

members of the Complainant as well as witnesses of the present case are defendants. Xerox copy of the plaint of aforesaid Title Suit has been

annexed as Annexure-3. Therefore, there is pending land dispute between the parties.

12. From bare perusal of the Complaint Petition, it appears that general, vague and omnibus allegation has been made against these Petitioners on

account of land dispute between the parties.

13. Therefore, impugned order passed by the learned Court below is not in accordance with law.

14. Accordingly, impugned order dated 30.05.2013 passed by the Judicial Magistrate, Bettiah, in Trial No.166 of 2013 arising out of Complaint Case

No.2408-C of 2010 along with entire criminal proceeding against the Petitioners is hereby quashed.

15. This application is, accordingly, allowed.