

(2011) 12 PAT CK 0069
In the Patna High Court
Case No : Criminal Writ No. 228 of 1998

Parmeshwar Prasad and Others

APPELLANT

Vs

The State Of Bihar, 4th Addl. District and Sessions Judge,
Nalanda at Bihar Sharif and Sri Girijanandan Prasad

RESPONDENT

Date of Decision : 16-12-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144, 190, 202
Penal Code, 1860 (IPC) — Section 379

Citation : (2011) 12 PAT CK 0069

Hon'ble Judges : Aditya Kumar Trivedi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.K. Trivedi, J.—Earlier there were altogether seven petitioners out of whom two Parmeshwar Prasad and Rohan Mahto died and on account thereof instant proceeding stood abetted against them. However, present proceeding is alive with regard to petitioners Dinesh Prasad, Satendra Prasad, Rohan Mahto, Shashi Bhusan Prasad wrongly mentioned as Krishana Prasad, Ramashish Prasad, Sahdeo Prasad @ Sahdeo Prasad Sinha @ Chhote who have asked for quahing of order dated 25.03.1998 passed in Cr. Revision No.14/240 of 1990 passed by learned Additional Sessions Judge, Nalanda at Bihar Sharif dismissing the same as well as order dated 08.08.1990 passed by Sri N.B. Singh learned Judicial Magistrate who summoned the petitioners to face trial for an offence punishable u/s 379 of the Indian Penal Code.

2. Briefly stated fact of the case as per Annexure-1 a complaint petition filed by O.P. No.2, Girija Nandan Prasad on 16.05.1990 showing the date of occurrence as 31.03.1990 against altogether seven accused (petitioners) is that they have harvested wheat crop standing over Plot No.195, Area 18.5 decimal, Plot No.180, Area 4 decimal on his protest, the accused persons abused and further threatened to dire consequences. Immediately he rush to P.S. and informed over

which police came into action, seized harvested wheat bundle from the house of Parmeshwar Mahto but subsequently failed to register a case. Then thereafter an inquiry u/s 202 of the Code of Criminal Procedure was conducted and after completing the same, cognizance u/s 379 of the Indian Penal Code has been taken. Then thereafter petitioners have filed Criminal Revision No.14/240 of 1990 and vide order dated 21.08.1990 the same was set aside. Complainant thereafter filed Criminal Revision No.662 of 1990 before the Hon"ble Court which was heard and vide order dated 13.05.1997, the order passed by the Revisional court was set aside and the matter was remitted back to the learned Revisional Court to proceed afresh over which there was revival of Criminal Revision No.14/240 of 1990 and then both the parties were heard and vide order dated 25.03.1998 dismissed the revision petition hence arose a case for filing instant petition.

3. It has submitted on behalf of the petitioners that Survey Plot No.180 and 195 happens to be Gairmajarua land. It was and is under exclusive possession of petitioners and the complainant has got no concern with the same. Then submitted that when there was hindrance caused by the complainant in peaceful possession of petitioners, petitioners brought up Title Suit No.33 of 1984 which was ultimately decided in favour of petitioners declaring title and possession with respect to the land under dispute and that happens to be reason behind that so many proceedings u/s 144 Cr.P.C. was disposed of. Not only this, full brother of complainant had earlier filed Complaint Case No. 123(c) of 1996 as well as 119(c) of 1986 with regard to the same survey plot numbers wherein ultimately from the Hon"ble Court, petitioners were acquitted. So submitted that no offence u/s 379 of the Indian Penal Code is made out against the petitioners more particularly taking into account the finding of the civil court wherein title as well as possession of petitioners has been confirmed. Apart from this, it has also been submitted that no specific allegation happens to be against the petitioners. Also submitted that from the S.A., statement of witnesses there happens to be inconsistency amongst them. Also submitted that on court question the witnesses have categorically stated that the accused persons are claiming the land after having the civil suit decided in their favour. So submitted that in the aforesaid background, the order of cognizance is bad.

4. Respondent no.3 had appeared and filed his counter affidavit, learned counsel for the respondent no.3 made elaborate submission challenging the authenticity of pleading as well as submission raised on behalf of petitioners. It has further been submitted that the judgment and decree of Title Suit No.33 of 1984 no more exist as the same was set aside in Title Appeal No.44 of 1991 vide judgment dated 29.08.1991 and same has also been confirmed by the Hon"ble High Court in Second Appeal vide judgment dated 14.07.1993 passed in connection with Second Appeal No.629 of 1991. Therefore, the finding of the learned Munsif with regard to title and possession of the petitioners no more exists. Contrary thereof title and possession of complainant on the basis of deed of exchange having in his favour executed by one of the co-sharer of accused/petitioner has been acknowledged and recognized. Then submitted that the

complainant and the witnesses during course of inquiry u/s 202 of the Code of Criminal Procedure supported the case of the prosecution consequent thereupon petitioners have been summoned to face trial for an offence punishable u/s 379 of the Indian Penal Code which is just legal and proper and so the instant petition has got no force in the eye of law and is accordingly fit to be dismissed. For want of non-appearance of State, it could not be heard.

5. Admittedly, for the purpose of taking of cognizance as prescribed u/s 190 of the Code of Criminal Procedure, a prima facie material has to be seen. The Magistrate is not required to make meticulous examination of the statement of witnesses at the present stage. So far S.A. as well as statement of witnesses are concerned, that give a prima facie material.

6. During course of admission of instant writ, it is evident that reliance was placed on the averments of petitioner regarding decree passed by a competent civil court acknowledging title and possession of petitioner in Title Suit No.33 of 1984. Surreptitiously, the pleading is absent with regard to subsequent event that means to say having the aforesaid judgment set aside in title appeal bearing Title Appeal No.44 of 1991 and the judgment of Appellate Court having confirmed in Second Appeal No.629 of 1991 by the Hon''ble Court negating the plea of petitioners that they happens to be in possession of the land. As such, possession as claimed by the petitioners no way found supported with and concurred by the finding of the civil court. The other litigations, as pointed out, arose during intermediary period and that was reason behind having concluded under said manner. In the present context, the same is not going to be benefited in favour of petitioners. The remaining point happens to be factual one which could be properly scrutinized during course of trial.

7. As such, I do not find any merit in this petition and is accordingly dismissed. The stay so granted vide order dated 19.05.1998 will no more remain in operation.