

(2009) 05 PAT CK 0023

In the Patna High Court

Case No : Criminal Miscellaneous No. 29659 of 2007

Parshuram Sah and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 28-05-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144, 145, 482
Penal Code, 1860 (IPC) — Section 34, 436

Citation : (2009) 3 PLJR 850

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Mahesh Narayan Parbat, for the Appellant; Jharkhandi Upadhyay for the State, M/s. Rajendra Kishore Prasad and Suresh Chandra Prasad for O.P. No. 2, for the Respondent

Final Decision : Allowed

Judgement

Abhijit Sinha, J.—The three F.I.R. named accused of Chapra (Town) P.S. Case No. 251 of 2005 have prayed for the quashing of the entire criminal proceeding arising therefrom including the order dated 26.5.2007 passed therein by the learned Chief Judicial Magistrate, Saran at Chapra, whereby he while differing with the final report submitted by the police has taken cognizance u/s 436/34 I.P.C. against the petitioners. On the basis of the accusations contained in a written report submitted by one Rashmi Devi, impleaded herein as O.P. No. 2, the aforesaid police case was registered against the three petitioners herein u/s 436/34 I.P.C. The prosecution case in brief is that litigation was pending between the informant and the accused in respect of a piece of land located behind the Khapraposh house of the informant and 3.12.2005 was the date fixed in that case. It is alleged that when the informant went to attend Court on that day she was pressurized and pestered to withdraw the case by accused Bindeshwari Sah who also threatened to ruin her. It is further alleged that on the day following at about 11 A.M. as the informant enroute to bathe in river Ganga had traversed a short distance from her house she suddenly heard her daughter, Jaimala, raising

alarm that the accused persons were setting their house on fire. She claims to have rushed back and saw the accused sprinkling kerosene oil on the house and even as she tried to stop them they set fire to her house and ran away. Notwithstanding efforts to douse the fire her house with all articles therein worth Rs. 1,00,000/- were reduced to shambles.

2. It is submitted on behalf of the petitioners that the informant has falsely implicated them by submitting the instant report on 13.12.2005 for the occurrence which had allegedly taken place on 4.12.2005 to unnecessarily harass the petitioner out of the enmity that existed between her and the petitioners. In support of the contention the learned counsel for the petitioners submitted that the informant is a habitual litigant and had filed a number of cases against the petitioners with the intention to put under pressure on them to give up their claim over 2 kathas 3 dhoors of land appertaining to khata No. 23 plot No. 77 purportedly purchased by their father. It is also submitted that earlier the complainant had filed a Complaint Case No. 560 of 2001 against the petitioners and others wherein her husband had filed an affidavit admitting the false accusations against the petitioners and their innocence as also their possession over the lands in question which eventually ended in acquittal vide judgment dated 13.2.2004. Thereafter another proceeding u/s 144/145 Cr.P.C. was started against the petitioners and their family members in respect of the said land related disputes which was eventually set aside by the Sessions Judge vide order dated 30.1.2002 passed in the Criminal Revision preferred by the petitioners.

3. In respect of the instant occurrence regarding the burning of her house information was given to the local police on the same day on the basis whereof Sanha Entry No. 104 of 2005 was made in Chapra (Town) P.S. However, it would be clear therefrom that the petitioners had not been named as having set her house on fire and the said burning of the house was attributed to accidental fire. It is further submitted that in view of the house being burnt due to accidental fire the local administration visited the P.O. on the same day and on the basis of the report dated 4.12.2005 of the Area Karamchari, Fire Accident Case No. 18 of 2005-06 was started before the competent authority for providing help to the family of the information and even in this case the informant had not attributed any accusation against the petitioners.

4. No show cause has been filed by O.P. No. 2 and only oral submissions defending the impugned order were sought to be advanced. In this connection, it was submitted that for taking cognizance only a prima facie case has to be established and meticulous examination of probabilities and improbabilities is not required.

5. There is no dispute that the Magistrate on perusal of the case diary and materials available on record is entitled to differ from the final report submitted by the Investigating Officer and lawfully take cognizance of the offence. In such cases, he is required to assign reason which compelled him to differ from the opinion formed by the police.

6. From perusal of the impugned order, it appears that he has merely stated that from perusal of the F.I.R., the case diary and documents available on record, he was satisfied that a prima facie case was made out against the accused.

7. Admittedly, the final report was submitted by the police after considering the materials that the Investigating Officer had collected in course of the investigation and the reasons for submitting the final report have been stated. But the impugned order does not assign any reason as to what materials were available before him to differ from the police report and take cognizance.

8. Having heard the submissions of the learned counsel for the petitioners as also Opposite Party No. 2, it appears that O.P No. 2 had not approached the police with clean hands inasmuch as she had suppressed therein material facts of a sanha having been registered with the police and of the Fire Accident Case No. 18 of 2005-06 having been registered. Had these facts been mentioned in the written report submitted by the informant the learned cognizance taking court may not have passed the impugned order.

9. Even otherwise, notwithstanding the registration of sanha and the Fire Accident Case wherein the petitioners had not been named by the informant, the informant in order to vex the petitioners filed the written report suppressing material facts which leads to a presumptive opinion that the written report had been filed by the informant only with the ulterior motive to harass the petitioners with vexatious litigation.

10. Apparently, the entire proceeding appears to be an abuse of the process of the court where the informant has attempted to use the process of the court to satisfy her own grudge. In view of the discussions made above, I find this an appropriate case where the powers u/s 482 Cr.P.C. should be exercised. Accordingly, the impugned order is hereby set aside and the application is allowed.