
(2011) 11 PAT CK 0074
In the Patna High Court
Case No : Criminal Writ No. 700 of 2010

Pawan Kumar Sharma and Others

APPELLANT

Vs

The State of Bihar, Rameshwar Pandey, Ranjan Kumar
Chouhan and Rai Birendra Prasad

RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:

Citation : (2011) 11 PAT CK 0074

Final Decision : Allowed

Judgement

Aditya Kumar Trivedi

1. Petitioners have prayed for quashing of Pandarak P.S. Case No.14 of 2010, 15 of 2010 and 16 of 2010 by way of filing instant petition.
2. As per Annexure-1, all the three cases were registered on 31.01.2010. In Pandarak P.S. Case No.14 of 2010 Rameshwar Pandey, D.C.L.R., Barh happens to be the informant who had alleged that he was deputed to maintain law and order during course of fixing pipeline at village-Dhibar by the N.T.P.C., Barh. On 30.01.2010 at about 11.30 A.M. Pawan Kumar, Chandan Kumar, Annu Kumari, Pinki Kumari and their mother along with 5-7 unknown persons came, caused hindrance, and abused. During said course Pawan Kumar enticed his family members to lay down near the wheel of vehicle. Anyhow the law and order was maintained. Then thereafter, the work continued and was completed.
3. More or less similar kind of allegation has been alleged against the aforesaid persons by one Ranjan Kumar Chouhan, C.O., Pandarak alleging therein that as per SDO's administrative order so communicated vide memo no.127/confidential dated 23.1.2010 he was deputed as Magistrate to maintain law and order at the juncture from where the road bifurcated to Dhibar. On 30-01-2010 at about 11 P.M. a group consisting of 10 to 15 persons came and said that the administration is at the road while the groups of N.T.P.C. are engaged in illegal digging. Over which he directed them to approach the concerned official. The

aforesaid event was protested by Pawan Kumar his brother Chandan Kumar, who also provoked the members of the mob to abuse out of whom he identified as Pinki Kumari and Annu Kumari and his mother. Then thereafter they left the scene resulting institution of hindrance Pandarak P.S. Case no.15/2010.. Another case number 16/2010 has been instituted by Rai Birendra Prasad, a person who was deputed as Magistrate at the main gate of N.T.P.C. He had alleged that on 30-01-2010 at about 01:00 P.M. Pawan Kumar, Chandan Kumar, Annu Kumari, Pinki Kumari along with 10-15 persons came and attempted to make criminal trespass inside N.T.P.C. premises which was prevented by them. At that very time, they also abused.

4. Contention on behalf of petitioners are that aforesaid case was instituted by the administration after having a criminal case bearing 63(c) of 2010 filed on behalf of one of the petitioner, namely, Pawan Kumar on 02-02-2010. The antedated institution of FIR is apparent from the fact that all the FIRs were received at the office of CJM on 05-02-2010 after lapse of so many days without having any cogent explanation. Then submitted that all the occurrence so alleged happens to be of dated 30.01.2010 while the FIR has been registered on 31.01.2010 at 10.30, 10.45 P.M. and there happens to be no explanation visible from the written report. The complaint filed by one of the petitioner, namely, Pawan Kumar happens to be Annexure-9. Then submitted that the real fact is that there has been wrong process adopted for accusation of land belonging to the petitioners for which C.W.J.C. No.8983 of 2008 was filed which was disposed of on 7/8-12-2009. The aforesaid matter has come up under LPA No.412 of 2010 which was disposed of on 20.04.2010. Then submitted that till the day of disposal of LPA, the land belonging to the petitioners happens to be under their peaceful possession and as the NTPC tried illegally to dispossess the petitioners from the land although they were disclosed regarding pendency of LPA No.412 of 2010 and only to teach a lesson to the petitioners on this score, as they became frustrated in their aim to illegally dispossess the petitioners for which Annexure-9 was filed, in antedated manner got these three cases registered one after another. The aforesaid order happens to be Annexure-5 of the petition. There happens to be no specific allegation against the petitioners. Also submitted that young married sisters, old mother have been made an accused with malafide intention and so submitted that in the totality of the event it is fit case wherein criminal prosecution should be quashed.

5. At the other hand the G.P. No. IV opposed and submitted that even pendency of LPA was not at all justified the action of the accused persons who indulged in anti-social activity by putting hindrance in the development work of the NTPC to be carried out. Then submitted that no delay has been caused in institution of the case rather due to some sort of administrative paraphernalia to be completed before lodging of the case was to be followed therefore the delay has been caused. Also submitted that in all the cases charge sheet has been submitted, cognizance has been taken and so the instant prayer has now become infructuous.

6. In a decision reported in State of Haryana and others Vs. Ch. Bhajan Lal and others, the Hon"ble Apex Court has identified following categories including others wherein prosecution can be quashed and those are :-

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroveretd allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, on investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient grounds for proceedings against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceedings is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

7. Now, identifying the aforesaid criteria the matter in hand has been taken for consideration from which it is evident that on the alleged date of occurrence, LPA No.412 of 2010 was already pending. From Annexure-9 it is evident that one of the petitioners had already filed complaint petition on 02-02-2010. In the aforesaid background when FIR of all the three cases are taken together, it is evident that the date and manner of occurrence to some extent of all the three cases happens to be the same with certain difference in time of occurrence. While Pandarak P.S. Case No.14 of 2010 contains date of occurrence as 30.01.2010 at about 11.30 A.M., Pandarak P.S. Case no.15 of 2010 contains 30.01.2010 at about 11.00 A.M. and Pandarak P.S. Case No.16 of 2010 as 31.01.2010 at about 1.00 P.M., although the FIR contains date of occurrence as 30.01.2010. FIR of all the cases happens to be received by the learned A.C.J.M.

on 05.02.02010. Certainly after filing of Annexure-9. Apart from aforesaid improbability over date and time as pointed out, the manner where under all the three occurrences have been alleged to have committed gives a clear cut story which no prudent man can accept because of the fact that letting of the accused at one place by the administration to approach at different place and then at third place when they were indulged in anti-social activities and further having presence of such huge number of police officials and further letting off them to move freely although there happens to be application of Section 353 of the I.P.C. which happens to be cognizable and non-bailable offence makes the whole occurrence, so alleged, improbable and further smacks some foul smell and therefore it clearly indicates that those cases have been manufactured after coming to know about institution of Annexure-9 just to wreaking vengeance. In the aforesaid facts and circumstances criteria number 5 and 7 is found to be fully satisfied.

8. Consequent thereupon, the FIR of Pandarak P.S. Case No.14 of 2010, 15 of 2010 and 16 of 2010 is quashed with its consequential events.

Accordingly, petition is allowed.