

(2000) 08 PAT CK 0058

In the Patna High Court

Case No : Criminal Miscellaneous No. 4889 of 1994

Prabhakar Jha and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-08-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 161, 482
Penal Code, 1860 (IPC) — Section 120B, 147, 148, 149, 307

Citation : (2001) CriLJ 1090 : (2001) 1 PLJR 345

Hon'ble Judges : Sanat Kumar Chattopadhyaya, J

Bench : Single Bench

Advocate : Teg Bahadur Singh, Ravindra Kumar Chaubey and Pranav Kumar, for the Appellant; Damodar Prasad Tiwary, Assistant Public Prosecutor and Susheel Chandra Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Sanat Kumar Chattopadhyaya, J.—Invoking jurisdiction of the Court u/s 482 of the Code of Criminal Procedure (hereinafter referred to as "the Code") the petitioners have moved this Court impugning the order taking cognizance dated 27-1-94 under Sections 307, 149, 380, 436, 120B, 149, 148 and 147 of the Indian Penal Code.

2. It appears from the record that earlier by order dated 12-10-1999 this Court allowed the application by quashing the impugned order. Opposite party No. 2, the informant, moved the Hon'ble Supreme Court in SLP Cri. No. 4022 of 1999 and the Supreme Court by its order dated 6-3-2000, while reversing the order of this Court directed to reconsider the application for quashing. By an Administrative order of the Hon'ble the Chief Justice the matter has been placed before me for fresh consideration.

3. The learned counsel for the parties have placed before me the paper book filed before the Supreme Court for perusal of the English version of the FIR lodged by

opposite party No. 2 and the order taking cognizance and for convenience I have looked to the English version of those two documents.

On 22-9-92 the FIR was lodged with the Officer-in-Charge of Hansdiha police station in the district of Dumka. Allegation was made that at 9 a.m. on 21-9-1992 when all activities of Vidyalaya were going on normal, all of a sudden students of the Vidyalaya started gathering in the Hall. The informant with some teachers went to the Hall and wanted to know about the problems of the students, but the students said that they did not want to talk either to the Principal or the teachers till Vidyalaya Samiti, Lucknow Region personally has not come. All persuasions failed and the classes were boycotted by the students. The informant when wanted to inform about the incident to the Deputy Commissioner personally, the students did not allow him to go. However, the informant sent one trusted messenger to Dumka to give the detailed information of the situation. At 1.00 p.m. the informant called staff meeting and requested all the staff members to co-operate in controlling the situation, but the request went in vain. This situation remained till 5 p.m. and by 6 p.m. some students gathered near the residence of the informant and started shouting slogans. Finding their aggressive mood, the informant wanted to inform the local police through an employee but the students did not allow him to go. However, the wife, daughter and son of the informant some how managed to reach the Hansdiha police station seeing troublesome and worsening situation. The wife got the complaint lodged. In the meantime, the informant tried to persuade the students but without result and some students started throwing stones. The burning petromax was broken, resulting darkness everywhere. The informant in darkness somehow managed to reach the police station for protection and finding that it was not safe to stay at Hansdiha at night, he left the place on a hired vehicle. He stayed in a hotel at Dumka in night along with two other teachers Sh. H.S. Thakur and Sh. A.K. Mahto, who had accompanied him. On 22-9-92 the informant met the Deputy Commissioner of Dumka and apprised him about the situation. On being instructed by the Deputy Commissioner the informant met the S.D.O. Dumka at his residence and also apprised him about this situation. The S.D.O. Dumka, the Magistrate and D.S.P. with police force reached Hansdiha police station and at about 12-30 p.m. the informant along with officials reached the Vidyalaya to solve the problem. On their arrival the informant found that about two hundred students had gathered near his residence in aggressive mood. They did not want to hear any one and shouted slogan "go back". When trying to persuade them, they started brick-batting, which caused damage to the police van, Jeep of the S.D.O. as well as the Vidyalaya vehicle. Some police Jawans were also hurt. The informant sustained injury on students attack and he had to rush for police protection to save his life. It is further alleged that furious students thereafter broke open his house and looted all valuables, broke furnitures and other things and set them on fire. He has given a detailed list of the items and its respective values, which were damaged by the students.

Narrating the Incident the informant had named the persons, who, according to

him, were actively involved in such untoward activities. In the said list the name of the present petitioners are there. According to the informant the persons named in the FIR had formed illegal gathering and with criminal conspiracy wanted to kill him with lethal weapons and damaged Government vehicle by brick-batting, ransacked his residence, stole valuables, destroyed some of the articles and also set them on fire. They also hampered the Government work. The name of the eye-witnesses have been given in the FIR.

4. On the basis of this FIR the police registered Saraiyhat (Hansdiha) Thana Case No. 0088 dated 22-9-1992 under the sections already mentioned above. The police after completion of the investigation filed chargesheet against the petitioners and other accused and the Magistrate on perusal of the chargesheet and case diary, being satisfied about prima facie case, took cognizance of the offence.

5. Mr. Teg Bahadur Singh, learned counsel appearing on behalf of the petitioners, submitted that the petitioners have been falsely implicated due to previous enmity and as a matter of fact it was a dispute between the informant and the students in which the petitioners, who are employees of the Vidyalaya, had no role to play. His further contention is that the learned Magistrate without applying his judicial mind has taken cognizance of the offence inasmuch as there is nothing in the case diary, which can remotely suggest that the petitioners were involved in the happenings in any way. Lastly, he submits that when on the same allegations a departmental proceeding was initiated against the petitioners and they were exonerated, the criminal case should be quashed at the threshold. In support of his contention he has relied on the following decisions of the Supreme Court reported in the cases of Brijlala Pd. Sinha Vs. State of Bihar, , Ashok Chaturvedi and Others Vs. Shitulh Chanchani and Another, , Dr. Sharma's Nursing Home v. Delhi Admn. (1998) 8 SCC 745 and P.S. Rajya v. State of Bihar 1996 SCC (Cri) 897.

6. Mr. Susheel Chandra Sinha, learned counsel appearing on behalf of the informant-opposite party No. 2, on the other hand, has strongly contended that at this stage the High Court will not be justified in quashing the order taking cognizance on perusal of any defence material. According to him the petitioners can agitate the matter before the learned Magistrare by producing relevant documents at the stage of framing of charge. In support of his contention he has relied on the decisions reportated in the cases of State of Haryana and others Vs. Ch. Bhajan Lal and others, , State of Bihar and Another Vs. P.P. Sharma, IAS and Another, and Ram Harsh Das Vs. State of Bihar and Others, .

7. The jurisdiction on the High Court for exercising its power u/s 482 of the Code has been explained by the Apex Court on more than one occasion. In the case of Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another, their Lordships have observed as follows :

It is thus settled law that the exercise of inherent power of the High Court is an

exceptional one. Great care should be taken by the High Court before embarking to scrutinise the FIR/chargesheet/complaint. In deciding whether the case is rarest of rare cases to scuttle the prosecution in its inception, it first has to get into the grip of the matter whether the allegations constitute the offence. It must be remembered that FIR is only an initiation to move the machinery and to investigate into cognizable offence. After the investigation is concluded and the chargesheet is laid the prosecution produces the statements of the witnesses recorded u/s 161 of the Code in support of charge-sheet. At that stage it is not the function of the Court to weigh the pros and cons of the prosecution case or to consider necessity of strict compliance of the provisions which are considered mandatory and its effect of non-compliance. It would be done after the trial is concluded. The Court has to prima facie consider from the averments in the charge-sheet and the statements of witnesses on the record in support thereof whether Court could take cognizance of the offence, on that evidence and proceed further with the trial. If it reaches a conclusion that no cognizable offence is made out no further act could be done except to quash the charge-sheet. But only in exceptional cases, i.e. in rarest of rare cases of mala fide initiation of the proceedings to wreak private vengeance process of criminal is availed of in laying a complaint or FIR itself does not disclose at all any cognizable offence - the Court may embark upon the consideration thereof and exercise the power. When the remedy u/s 482 is available, the High Court would be loath and circumspect to exercise its extraordinary power under Article 226 since efficacious remedy u/s 482 of the Code is available when the Court exercises its inherent power u/s 482 the prime consideration should only be whether the exercise of the power would advance the cause of justice or it would be an abuse of the process of the Court. When Investigating Officer spends considerable time to collect the evidence and places the charge-sheet before the Court, further action should not be short-circuited by resorting to exercise inherent power to quash the charge-sheet. The social stability and order requires to be regulated by proceeding against the offender as it can offence against the society as a whole. This cardinal principle should always be kept in mind before embarking upon exercising inherent power.

The same views have been reiterated in the case of State of Bihar Vs. Rajendra Agrawalla, .

8. It is to be borne in mind that in a warrant case instituted on a police report and triable by a Court of sessions, which is applicable in the present case, the trial commences after a notice is issued to the accused for their appearance and once they appeared or produced by the police, papers are supplied to them as provided under the provision" of the Code. After supplying of papers to the accused he can disclose his defence either in his petition for discharge or at the time of framing of charge. At that stage he may urge before the Court that the allegations made against him are result of some vengeance or mala fide. It is true that if the allegations made in the complaint petition or in the FIR do not make out a prima facie case, the High Court in its inherent jurisdiction can quash

the proceeding to prevent abuse of the process of the Court. But in the instant case when the Investigating Agency after spending considerable time collected the evidence and placed the charge-sheet before the Court and the Chief Judicial Magistrate has taken cognizance of the offence, their further action should not be short-circuited by resorting to exercise inherent power to quash the order taking cognizance. If, eventually, the learned Magistrate comes to a conclusion that no offence was made out against the petitioners, it will be open to him to discharge or acquit them as the case may be. My aforesaid view finds support from the decision of the Supreme Court in the case of Roshanali Burhanali Syed Vs. State of Gujarat, .

9. The decision relied by the learned counsel for the petitioners in the case of Brijlala Pd. Sinha Vs. State of Bihar, , in my view, is quite misplaced. In that case question did not arise about jurisdiction of the Court in quashing the order taking cognizance. Similarly, the facts in the case of Ashok Chaturvedi and Others Vs. Shitulh Chanchani and Another, are quite distinguishable inasmuch as in that case the Supreme Court was of the opinion that an accused is not debarred from invoking the inherent jurisdiction of the Court at the earliest point of time when the Magistrate has taken cognizance and he is not debarred from doing so merely because he has right to plead at the time of framing of charges that there is no material for framing of charges. There cannot be two opinion about the settle principles, but in the instant case learned counsel for the petitioners has failed to point out that the allegations made in the FIR do-not constitute any offence. The decision in the case of Dr. Sharma's Nursing Home 1998 (8) SCC 745 (supra) is quite different because in that case point for consideration was whether allegations made in the complaint petition constituted an offence of cheating. The last decision relied on by the learned counsel is the case of P.S. Rajya v. State of Bihar 1996 SCC 897 (supra). The facts of the aforesaid case is quite different because it appears that the order taking cognizance was impugned before this Court in a petition u/s 482 of the Code. The High Court allowed the petition and remitted the matter back to the Special Judge directing him to get a preliminary enquiry by higher authority or do it himself before taking cognizance of the matter. When second time cognizance was taken on remand the appellant again moved this Court but did not get success at the second time. The appellant moved the Supreme Court making a grievance that notwithstanding the direction of the High Court to the Special Judge to hold a preliminary enquiry before taking cognizance, the Court took cognizance once again without holding any enquiry. His case was that in view of mere reports of the Central Vigilance Commission and the Union Public Service Commission concerning idential departmental charge, there was absolutely nothing for the prosecution to proceed further. In those circumstances their Lordships took into consideration the report of the departmental enquiry including other documents and quashed the proceeding.

10. In the present case on the other hand except the argument of the counsel there is no averment in the petition that in a departmental proceeding for the

same charges the petitioners were exonerated. Moreover, from the impugned order it appears that before issuing processes the petitioners had already appeared before the Magistrate and, as such, in my view, they can raise all their points at an appropriate stage.

11. In the result, I find no merit in this application, which is, accordingly, dismissed.

The interim order dated 12-4-94 is vacated.