

(2018) 03 PAT CK 0125

In the Patna High Court

Case No : Criminal Miscellaneous No. 31316 Of 2017

Radhe Shyam Singh

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 05-03-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 34, 406, 420, 467, 468, 471
Prevention Of Damage to Public Property Act, 1984 — Section 3

Citation : (2018) 3 PLJR 815

Hon'ble Judges : Ashwani Kumar Singh, J

Bench : Single Bench

Advocate : Shambhu Saran Singh, Jharkhandi Upadhyay

Final Decision : Allowed

Judgement

1. This application under Section 482 of the Code of Criminal Procedure (for short "the Cr.P.C.") has been filed by the petitioner for quashing of the order dated 05.09.2016 passed by the learned Judicial Magistrate, Ist Class, Patna in Rajiv Nagar P.S. Case No.45 of 2016 by which cognizance of the offences punishable under Sections 420, 467, 406, 468 and 471 read with 34 of the Indian Penal Code (for short "the IPC") and Section 3 of the Prevention of Damage to Public Property Act, 1984 has been taken and the petitioner has been summoned.

2. The informant Saurabh Kant, Executive Engineer of the Camp Office, Bihar State Housing Board, Patna submitted his written complaint to the Station House Officer, Rajiv Nagar Police Station, Patna on 17.02.2016 pursuant to which a police case was registered and investigation was taken up. It is alleged in the complaint that while the team of Bihar State Housing Board (for short "BSHB") visited Digha Ashiana Road near

Bajrang Vihar Colony it was noticed that accused persons including the petitioner were engaged in erecting boundry wall and even piling work was

being conducted on the land acquired by the BSHB. It was also noticed that construction of lintel work and plinth beam was also going on in the area

near Ghurdaur Road.

3. On the basis of the allegation made by the informant Rajiv Nagar P.S. Case No.45 of 2016 was instituted against the petitioner and others and

investigation was taken up.

4. Upon completion of investigation, the police submitted charge-sheet against the petitioner and others for having committed offences under Sections

406, 420, 467, 468 and 471 read with 34 of the IPC and Sections 3 of the Prevention of Damage to Public Property Act, 1984. On perusal of the

police report, the learned Judicial Magistrate took cognizance of the offences and summoned the petitioner vide the impugned order dated 05.09.2016.

5. Learned counsel for the petitioner submitted that the entire prosecution case so far as it relates to the petitioner is false and concocted. The details

of the area over which construction was being made by the petitioner has not been given in the FIR. Even if the entire allegations made in the

complaint are taken to be true, ingredients of the offences alleged under the Penal Code would not be attracted as there is no allegation of any

cheating, criminal breach of trust, forgery of valuable security, will etc., forgery for the purpose of cheating or using as genuine a forged document or

electronic record. He submitted that even ingredients of mischief causing damage to public property under Section 3 of the Prevention of Damage to

Public Property Act are not attracted.

6. On the other hand, Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor submitted that there is direct and specific allegation in the FIR

that the petitioner and others were making illegal construction over the acquired property of the BSHB. The accused persons are alleged to have

committed mischief and thereby caused loss and damage to the property of the BSHB by changing its physical feature.

7. I have heard learned counsel for the parties and perused the record.

8. I find substance in the submissions made by the learned counsel for the petitioner in respect of the offences under the IPC.

9. Apparently, there is no allegation of causing criminal breach of trust or

cheating or forgery of valuable security, will etc. or forgery for the purpose of cheating or using as genuine a forged document or electronic record. Without there being any material against the accused persons in respect of the offence punishable under the IPC the investigating agency submitted police report on completion of investigation under the aforesaid provisions of the IPC along with Section 3 of the Prevention of Damage to Public Property Act, 1984. The learned Magistrate also without applying her judicial mind mechanically took cognizance of the offences punishable under various sections of the Penal Code.

10. In that view of the matter, the order of cognizance of the offences under the IPC is bad in law. However, there is specific allegation that the petitioner and others committed mischief by making construction over public land and changing its physical feature. The said allegation would certainly attract ingredients of the offence punishable under Section 3 of the Prevention of Damage to Public Property Act, 1984 and the order taking cognizance of the said offence can not be held to be bad.

11. In view of the discussions made above, the impugned order dated 05.09.2016 passed by the learned Judicial Magistrate, 1st Class, Patna to the extent of taking cognizance of the offences punishable under Sections 420, 467, 406, 468 and 471 read with 34 of the IPC is set aside.

12. The court below shall proceed against accused persons in respect of the offence punishable under Section 3 of the Prevention of Damage to Public Property Act, 1984 only.