
(2014) 11 PAT CK 0028

In the Patna High Court

Case No : Criminal Miscellaneous No. 28187 of 2012

Raj Kishore Tiwary

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 14-11-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 379, 504

Citation : (2014) 11 PAT CK 0028

Hon'ble Judges : Ashutosh Kumar, J

Bench : Single Bench

Advocate : Radha Mohan Pandey, Advocate for the Appellant; Jharkhandi Upadhyay, A.P.P. and Shashi Kumar, Advocate for the Respondent

Judgement

Ashutosh Kumar, J.—Heard learned counsel for the petitioners and learned counsel for the opposite party No. 2. The State is being represented by Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor.

2. The petitioners are aggrieved by the 31.03.2011 passed by the learned Chief Judicial Magistrate, Bhabhua (Kaimur) in connection with the Complaint Case No. 1454 of 2010, whereby cognizance has been taken under Sections 504 and 379 of the Indian Penal Code.

3. The allegation in the complaint petition is that the crops, which was harvested by the opposite party No. 2 was reaped by the petitioners and other accused persons. When the same was protested, the opposite party No. 2 was threatened by dire consequences. The losses were estimated by the opposite party No. 2 at Rs. 16,000/-.

4. Learned counsel for the petitioners submits that absolutely false case has been lodged. A title suit came to be filed by one Satyendra Tiwary, who claimed himself to be the adopted son of one Rajeshwari Kuer, who is the vendor of the land in question against two of the petitioners in the present petition, namely, Raj Kishore Tiwary and Rakesh Kumar Tiwary. In the aforesaid title suit, namely,

Title Suit No. 120 of 1997, the opposite party No. 2 has been impleaded as defendant No. 13, whereas the vendor of the petitioners has also been impleaded as party-defendant.

5. Learned counsel for the petitioners further states that though the opposite party No. 2 was appointed as a receiver on 15.12.1999 by the learned trial Court, which was in seisin of Title Suit No. 120 of 1997, the order appointing opposite party No. 2 as receiver was challenged in Misc. Appeal No. 122 of 2000 before the Patna High Court. The order, by which opposite party No. 2 was appointed as a receiver, was set aside on twin ground of the requisite formalities not having been complied with by the learned trial Court, which has passed the order, appointing opposite party No. 2 as a receiver of the property and that such an order was never acted upon as no writ was issued by the concerned Court.

6. Learned counsel for the petitioners further submits that as required under law, the receiver, opposite party No. 2, till the subsistence of the order dated 15.12.1999, never rendered any account of the property. This only led to one inference that complainant-opposite party No. 2 was never in possession of the land and that he never acted as receiver as directed by the trial Court in the first instance.

7. In that view of the matter, since there was dispute over the possession and ownership of the property in question, where the petitioners are said to have encroached upon and are also alleged to have reaped standing crops worth Rs. 16,000/-, it can safely be presumed that such allegations have been conjured up for particular purpose.

8. Learned counsel appearing for opposite party No. 2 very vehemently argued that the order setting aside the appointment of opposite party No. 2 as receiver came in the year 2011, even though such Misc. Appeal was filed way back in the year 2000. During such period, the opposite party No. 2 remained in possession of the property and, therefore, any intrusion by the petitioners in the said property would entail criminal liability as against the petitioners.

9. Considering the fact that there is a serious dispute with respect to the title over the property in question and the attendant fact that the possession remained clouded for all such years, no offence under Section 379 or 504 of the Indian Penal Code can at all be said to be made out as against the petitioners. A civil dispute has unnecessarily given rise to a criminal case. Allowing this criminal proceeding to continue would definitely prejudice the case of either of the parties in the title suit.

10. On the above premised reason, the order taking cognizance dated 31.03.2011 passed by the learned Chief Judicial Magistrate, Bhabhua (Kaimur) in connection with the Complaint Case No. 1454 of 2010 is set aside.

11. The application is allowed.