
(2011) 11 PAT CK 0064

In the Patna High Court

Case No : Criminal Revision No. 566 of 2002

Rajendra Prasad Mahto

APPELLANT

Vs

The State of Bihar and Dinesh Singh

RESPONDENT

Date of Decision : 29-11-2011

Acts Referred:

Citation : (2011) 11 PAT CK 0064

Final Decision : Allowed

Judgement

Amaresh Kumar Lal, J.—The accused petitioner has preferred this revision application against the order dated 6.04.2002 passed by the learned Judicial Magistrate, Ist Class, Begusarai in complaint case no.69C/2002 taking cognizance under Sections 420, 467 and 468 of the I.P.C.

2. The complainant opposite party no.2 filed the aforesaid complaint case no.69C/2002 on 21.01.2002 in the court of learned Chief Justice Magistrate alleging therein that the accused persons hatched a conspiracy got Parcha of one Katha each prepared in the name of Maya Devi and Dhanterash Sharma out of plot no.3561. The signature of one fictitious person namely Binod Kumar, son of late Vishwanath Singh is there on the documents. Mukesh Kumar has sworn affidavit that he was the only son of late Vishwanath Singh. The petitioner in collusion with accused Ram Prakash Singh and Bholanath caused gain to accused Maya Devi and Dhanterash Sharma and issued Parcha on the basis of forged documents. In the schedule of the plaint, the details of the land has been given.

3. On 22.01.2002, the learned Chief Judicial Magistrate, Ist Class was pleased to transfer the case to the court of learned Judicial Magistrate, Ist Class. The complainant was examined on Solemn Affirmation and thereafter, three witnesses were examined on his behalf and the learned Magistrate was pleased to take cognizance against the accused including the petitioner for the offence punishable under Sections 420, 467 and 468 of the I.P.C. vide the impugned order dated 6.04.2002.

4. It is submitted that from perusal of the complaint petition and the deposition of the witnesses, it appears that no specific allegation has been made against the petitioner and the dispute if any is a pure civil dispute. The accused Maya Devi and Dhanterash Sharma filed application before the Circle Officer for Purchase under the Bihar Privileged Persons Homestead Tenancy Act and the Circle Officer was pleased to call for the reports from the Karamchari and Circle Inspector and the Amin. From perusal of the report, it appears that the house of those persons was found since a long time. Further, the Circle Officer made himself a local inspection and examined all the parties during the inspection. The land lord had given his written no objection on the said notice (Annexure 10 series). Thereafter, the Circle Officer passed final order dated 3.07.2001 in both the cases i.e. 30 & 31/2001-01 (Annexures-11 & 12). A proceeding u/s 144 Cr.P.C. had also been initiated in the land in question vide case no.433/1955 and the Sub-Divisional Magistrate had made inquiry and had made local inspection and decided the proceeding vide order dated 30.01.1956 and it was found that the houses of the applicants were there and the case has been decided accordingly (Annexure-13). In the land in question is Gairmazurua Khas and the complainant has no claim over the land in question.

5. It has been further submitted that the petitioner has no personal interest and he passed the orders in the capacity of a Circle Officer and in fact, there is no specific allegation against the petitioner. The order passed by the Circle Officer has been challenged by the complainant before the Collector in Revision Case No.70/2001 and if there is illegality in the order of the Circle Officer (petitioner), then, it will be set aside.

6. He has further submitted that since the petitioner had passed the impugned order as a Judge in view of Sections 77 and 78 of the I.P.C. and in discharge of official duty, therefore, no cognizance should have been taken against the petitioner.

7. In support of his contention, he has relied upon a decision in the case of Sudhanshu Bhushan Ram and Another Vs. State of Bihar and Another,

8. The learned counsel for the opposite party submits that the petitioner is also one of the accused, who have acted in the conspiracy to make illegal gain to the other accused Maya Devi and Dhanterash Sharma, as such, the petitioner is not entitled to get the benefit u/s 197 Cr.P.C. and the petitioner has also not acted judicially. In support of his contention, he has relied upon a decision in the case of Parkash Singh Badal and Another Vs. State of Punjab and Others,

9. In that decision, it has been held that the principle of immunity protects all acts which the public servant perform in the exercise of functions of Government. The purpose for which they are performed protects these acts from criminal prosecution. However, there is an exception. Where a criminal act is performed under the colour of authority but which in reality is for the public servant's own pleasure or benefit then such acts shall not be protected under the doctrine of

State immunity. If on facts, it is prima facie found that the act or omission for which the accused was charged had reasonable connection with discharge of his duty then it must be held to be official to which applicability of Section 197 cannot be disputed.

10. In the case in hand, it appears that the petitioner had granted Parcha to the other accused in the capacity of official functionary which comes under the purview of his official duty based on the reports submitted by the Halka Karamchari and the Circle Inspector and also based on the order made by the Sub-Divisional Magistrate in the old case, therefore, this decision is not helpful to the complainant.

11. The learned counsel for the opposite party has further referred to a decision in the case of Kanchan Kapoor Vs. The State of Bihar and Another

12. It appears that the aforesaid decision is also not helpful to the opposite party.

13. Sections 77 & 78 of the I.P.C. are under Chapter IV, which provides general Exceptions from criminal prosecution to certain class of persons. Sections 77 and 78 are reproduced below :

77. Act of Judge when acting judicially- Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

78. Act done pursuant to the judgment or order of Court- Nothing which is done in pursuance of, or which is warranted by the judgment or order of, a court of Justice; if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

The word "Judge" has been defined in Section 19 of the I.P.C. which runs as follows :

19. "Judge"- The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person,

who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, is not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or

who is one of a body of persons, which is empowered by law to give such a judgment.

14. It appears that the act of the petitioner has been done in discharge of official duty and the official capacity. The complainant has made the petitioner as an accused which may be treated to satisfy the personal grudge and vendetta of the complainant. The law does not permit initiation of criminal proceeding to satisfy

all such undue lust.

15. The term "Collector" as defined in Section 2(b) of the Bihar Privileged Persons Homestead Tenancy Act, 1947 includes "any officer appointed by the State Govt. to discharge all or any of the functions of a Collector under the Act". A Circle Officer, while passing orders on an application under the Act, declaring the applicants to be "privileged tenants" and fixing or apportioning rent for holding in question can be said to be acting as Collector under the Act. Ganga Ram Bhagat Vs. Deputy Commissioner, Santhal Parganas and Another,

16. It further appears that considering all these facts, the further proceeding against the petitioner in connection with aforesaid complaint case no.69C/2002 was stayed by a Bench of this Court vide order dated 11.07.2002.

17. For the aforesaid reasons, it appears that the impugned order is not sustainable so far the petitioner is concerned. Accordingly, it is set aside so far as the petitioner is concerned.

18. In the result, this revision application is allowed to the extent indicated above.