

(1977) 09 PAT CK 0008

In the Patna High Court

Case No : Criminal Miscellaneous No's. 136 and 1007 of 1975

Rajendra Singh and State of Bihar and Others

APPELLANT

Vs

Kapildeo Singh and Others and Jagdish Singh

RESPONDENT

Date of Decision : 13-09-1977

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 127, 128, 144, 197, 202
Penal Code, 1860 (IPC) — Section 188, 197, 342, 379, 384

Citation : (1978) 26 BLJR 12

Hon'ble Judges : B.D. Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.D. Singh, J.—These two applications have been filed by two different sets of petitioners. In Criminal Miscellaneous No. 136 of 1975, the petitioner is Rajendra Singh, whereas in Criminal Miscellaneous No. 1007 of 1975, the petitioners are Kapildeo Singh and six others. In both the cases, Jagdish Singh, who is one of the opposite party, is the complainant. In Criminal Miscellaneous No. 136 of 1975, the State of Bihar has also been made as opposite party No. 1. The petitioners in the two cases have filed an application in this court separately u/s 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code") for quashing the order dated the 16th November, 1974 passed by the Chief Judicial Magistrate, Aurangabad, taking cognizance against the petitioners in the two applications under Sections 379, 384 and 342 of the Indian Penal Code on the basis of the complaint lodged by Jagdish Singh (opposite party) and transferred the case to Sri N.K. Kanth, Judicial Magistrate, Second Class, Aurangabad, for disposal.

2. Since the complaint in both the applications is common and the order taking cognizance is also common passed by the Chief Judicial Magistrate, Aurangabad, on the complaint lodged by Jagdish Singh, the two applications have been heard together and this judgment will govern both of them.

3. In order to appreciate the points involved in these two applications it is accessory to state some material facts to be gathered from the two applications. On the 18th December, 1972 the opposite party Jagdish Singh, filed a petition of complaint before the Sub-Divisional Magistrate, Aurangabad, alleging therein that on the 16th December, 1972, the accused persons including the officer-in-charge of Daudnagar police station, who is the Sub-Inspector of Police and sole petitioner in Criminal Miscellaneous No. 136 of 1975, with armed force arrived at the disputed land variously armed in respect of a proceeding u/s 144 of the Code which was pending. The said Sub-Inspector of Police ordered to harvest the standing crops of the disputed lands which were grown by the complainant, and, the other accused persons who are the petitioners in the other case cut away the standing crops and kept them in the Khalian of Narsingh Singh, and, the complainant thus suffered a loss of Rs. 1,000/-. It was further alleged that the complainant protested to the cutting of the crops and thereafter the Sub-Inspector of Police Rajendra Singh got the hands of the complainant tied with the help of the armed force and took him on his jeep to village Arai. Rajendra Singh demanded Rs. 400/- for his release and threatened that if the money was not paid, he would be sent to jail and would be implicated in a number of cases. The complainant thereafter got the money through Padum Singh village Arai and the said amount was paid to Rajendra Singh, Sub-Inspector, who then released the complainant. The Sub-Divisional Officer examined the complainant on solemn affirmation and sent the matter to Sri R. N. Pandey, Magistrate, First Class, Aurangabad, for enquiry u/s 202 of the Code. Sri Pandey made a thorough enquiry and submitted a report that no prima facie case was made out against Rajendra Singh. However, the Chief Judicial Magistrate, after receiving the said report, took cognizance against the petitioners, and transferred the case for trial to Sri Jiwan Tigga, Judicial Magistrate, First Class, Aurangabad. The 4th of November, 1974 was the date fixed for issue of summons in the aforesaid case but the complainant did not appear on the 4th November, 1974, nor did he file any process for issue of summons and, hence, the case was dismissed by the Judicial Magistrate u/s 204(4) of the Code. On the 16th November, 1974 the complainant again filed a fresh complaint on the same facts, and, on the basis of this complaint dated the 16th November, 1974, the impugned order was passed. In the application, a prayer has been made also to quash the entire proceeding pending before Sri N. K. Kanth, Judicial Magistrate.

4. In Criminal Miscellaneous No. 136 of 1975, Mr. B. P. Singh, learned Counsel, appearing on behalf of the petitioner has raised the following two points for consideration by this court. Firstly, he has contended that the Chief Judicial Magistrate before taking cognizance ought to have given reasons why he was differing from the report which was submitted by Sri Pandey wherein he had mentioned that no prima facie case was made out against the accused persons. In my view, there is no merit in this submission. The said report was not binding upon him. It was open to him to differ from the said report and it was not at all necessary for him to give reasons as to why he was differing from the said

report. In my view, he is more concerned with the allegations contained in the petition of complaint. Mr. Singh, secondly, submitted that his client, namely, Rajendra Singh being the Sub-Inspector of Police, officer-in-charge of the police station, was directed by the Sub-Divisional Magistrate by order dated the 18th November, 1972 to maintain status quo ; the relevant portion of which reads thus:

This is a petition for action u/s 188 I.P.C. against the O.Ps. To the O.C. Daudnagar for enquiry and report. Police to maintain status quo in the meantime.

Therefore, what he had done was in course of the discharge of his duty in pursuance of that order. Hence, according to the learned Counsel, no cognizance could have been taken against the Sub-Inspector without having prior sanction required u/s 197 of the Code. In this connection, he also drew my attention to the provisions of Section 197 of the Code. Clause (2) of Section 197 reads as follows:

(2) No court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

Therefore, Mr. Singh emphasized that before taking cognizance, it was incumbent that the sanction of the required authority should have been obtained for proceeding against the Sub-Inspector who was performing his official duty, learned Counsel for the petitioner has also referred to Annexure-2 which is a copy of the notification issued in the Bihar Gazette (Home Police Dept.) and this notification has come into force with effect from the 1st April, 1974. The relevant portion of the notification runs thus:

In exercise of the powers conferred by Sub-section (3) of Section 197 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Governor of Bihar is pleased to direct that the provisions of Sub-section (2) of Section 197 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974) shall apply to the members of the force charged with maintenance of public order as specified in the Annexure to the notification wherever they may be concerning.

Annexure :-Class or category of the members of the forces (1) Bihar police, (2) Military police, (3) Home guards.

5. On the other hand, learned Counsel appearing on behalf of opposite party No. 2, namely, the complainant submitted that on examining the contents and allegations contained in the petition of complaint, it is apparent that the said Sub-Inspector was not performing his official duties. Moreover, in the instant case, this very Sub-Inspector had filed an application before the Sub-Divisional Magistrate for according permission to him to get the crops of the disputed land cut and removed which was rejected by order dated the 15th December, 1972. This fact is also mentioned in the complaint petition and the learned Counsel for

opposite party No. 2 has produced before me the certified copy of the order-sheet of the proceeding u/s 144 of the Code. The order-sheet dated the 15th December, 1972 indicates that it has been held that in the proceeding u/s 144 of the Code it was not lawful to get the standing crops of the land harvested either through the police or through Mukhiya since the standing crops are not in their possession or under their management. Hence, no order for harvesting the crops by the police or by the Mukhiya could be passed. Even then, as alleged in the complaint petition, Rajendra Singh went to the disputed land and got the standing crops harvested on the 16th December, 1972. Therefore, be submitted that it could not be said that Rajendra Singh was performing the official duty whey he got the said standing crops cut. Learned Counsel for opposite party No. 2 has also submitted in this connection that whether the petitioner was performing the official duties or not at the stage of taking cognizance, the only relevant material for consideration is to be found in the complaint itself. If the allegations contained in the complaint do not indicate any official duty, the cagnizance. cannot be held to be bad for non-compliance of Section 197 of the Code. In order to find support to his submission, he has relied on the decision in Nagraj Vs. State of Mysore, , and he drew my attention to paragraphs 12, 13, 14 and 15 of the decision. In my view, for the purposes of this case, it will be relevant only to mention the observations made in paragraphs 12 and 13.. In paragraph No. 12, it has been observed that when a complaint is made to a criminal court against any police officer and an allegation is made indicating that the police officer had acted or purported to act under Sections 127 and 128 of the Code and in so doing committed some offence complained of, the Court will not entertain the complaint unless it appears that the State Government had sanctioned the prosecution of that police officer. If the allegations in the complaint do not indicate such facts, the Court can have no ground for looking to the sanction of the Government and in the absence of such a sanction for refusing to entertain the complaint. It must proceed with the complaint in the same manner as it would have done in connection with complaints against any other order. in paragraph No. 13, it has been held that the occasion for the Court to consider whether the complaint could be filed without the sanction of the Government would be when at any later stage of the proceedings it appears to the Court that the action of the police officer complained or appears to come within the provisions of Sections 127 and 128 of the Code. This can be either when the accused appears before the Court and makes such a suggestion or when evidence or circumstances prima facie show it. The mere suggestion of the accused will not, however, be sufficient for the Court to hold that sanction was necessary. The Court can consider the necessity of sanction only when from the evidence recorded in the proceedings or the circumstances of the case it be possible to hold either definitely that the alleged criminal conduct was committed or was probably committed in connection with action under Sections 127 and 128 of the Code. A similar view was taken in Prabhakar V. Sinari Vs. Shanker Anant Verlekar, . In my view, the submission of the learned Counsel appearing for opposite party No. 2 is well founded. However learned Counsel appearing on

behalf of the petitioner has relied also on the decision in *Amrik Singh Vs. The State of Pepsu*, where their Lordships while dealing with the provisions contained in Section 197(1) of the Code observed that it was not every offence committed by a public servant that required sanction for prosecution u/s 197(1), Criminal Procedure Code ; nor even every act done by him while he was actually engaged in the performance of his official duties, but if the act complained of was directly concerned with his official duties so that if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary ; and that would be so irrespective of whether it was, in fact, a proper discharge of his duties, because that would really be a matter of defence on the merits which would have to be investigated at the trial, and could not arise at the stages of the grant of sanction which must precede the institution of the prosecution. In my opinion, the above observations of their Lordships do not help the contention of the learned Counsel for the petitioner, because in that case also it has to be seen as to whether the act complained of was directly concerned with his official duty or not. I have already indicated that that fact can be examined at a later stage when the petitioner would appear before the Court and lead evidence on the point or produce certain materials on the record. Further, it may be noticed that the decision in *Amrik Singh's case* (supra) was also referred to in the case of *Prabhkar v. Sinari V. Shankar Anant Verlekar* (supra). In that view of the matter, in my opinion, the impugned order taking cognizance against the petitioner cannot be held to be bad. The application of the petitioner, therefore, is dismissed.

6. Now, I turn to consider the case of the petitioners in the other case, namely, Criminal Miscellaneous No. 1007 of 1975. The facts of that case are more or less common. Learned Counsel appearing on behalf of the petitioners in that case, has submitted that the impugned order taking cognizance against those petitioners was bad, firstly, because apart from the cognizance taken u/s 379 of the Indian Penal Code against those petitioners, the learned Chief Judicial Magistrate has also taken cognizance under Sections 342 and 384 of the Indian Penal Code. Section 342 relates to wrongful confinement, whereas Section 384 relates to extortion. There is no allegation against these petitioners that they committed offences as prescribed u/s 342 or Section 384 of the Indian Penal Code. In the absence of any such allegation in the complaint, no cognizance could have been taken against those petitioners under the two sections, namely, Sections 342 and 384 of the Indian Penal Code. In my view, this submission of the learned Counsel for the petitioners is well founded. Therefore, to that extent the order is bad and that part of the order cannot be sustained. Consequently, the order of cognizance taken against the petitioners to that extent is modified.

7. As regards the cognizance u/s 379 of the Indian Penal Code taken against the petitioners, learned Counsel for the petitioners submitted that in this case there was a bona fide land dispute, and, therefore, according to the petitioners they were in possession of the land in dispute and as such, there would be no offence u/s 379 of the Indian Penal Code. In my opinion, on the background of the

present case, when the proceedings u/s 144 of the Code was pending and when there was an order of maintaining status quo, in that circumstance, at any rate those petitioners should not have removed those standing crops. Hence this part of the submission of the learned Counsel for the petitioners cannot be accepted. According to me, the cognizance u/s 379 of the Indian Penal Code cannot be interfered with. However, during the course of the trial, as provided u/s 245 of the Code, the Magistrate may discharge them in accordance with law.

8. In the result, both the applications are dismissed and the impugned order is affirmed in its entirety so far as the petitioner in Criminal Miscell. No. 136 of 1975 is concerned, whereas it is modified to the extent mentioned above so far as the petitioners in Criminal Miscellaneous No. 1007 of 1975 are concerned.