
(2019) 12 PAT CK 0041

In the Patna High Court

Case No : Criminal Miscellaneous No. 76952 Of 2019

Ram Chandar Yadav @ Ram Chandra And Ors

APPELLANT

Vs

State Of Bihar And Anr

RESPONDENT

Date of Decision : 02-12-2019

Acts Referred:

Indian Penal Code, 1860 — Section 147, 323, 341, 379

Scheduled Castes And Scheduled Tribes (Prevention Of Atrocities) Act, 1988 — Section 3(1)(r)

Citation : (2019) 12 PAT CK 0041

Hon'ble Judges : Partha Sarthy, J

Bench : Single Bench

Advocate : Parmeshwar Mehta, Dr. Ajeet Kumar

Final Decision : Dismissed

Judgement

Heard learned counsel for the petitioners and learned APP for the State.

This application has been filed by the petitioners praying for quashing of the order dated 02.02.2019 passed in Complaint Case no.226-C of 2018/ SC/ST- 83 of 2018 passed by the learned Special Judge-cum-Additional District Judge 1st, Supaul whereby the learned Court was pleased to take cognizance against the petitioners under sections 147, 341, 323 and 379 of the Indian Penal Code and section 3(1)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1988 (hereinafter referred to as 'the SC/ST Act').

A complaint was filed by the opposite party no.2 on 3.4.2018 in the Court of learned Chief Judicial Magistrate, Supaul stating therein with respect to the land described in the petition measuring an area of 1 acre 80 decimal (1 bigha 10 dhurs and 19 dhurs) that the same is in the name of the father and uncle of the opposite party no.2, they have been paying rent and have been receiving Malguzari receipt for the same. It is stated that at the relevant date and time of occurrence the accused persons along with some unknown criminals entered into the aforesaid agricultural land of the complainant, they started harvesting the

crop therein and carrying the same with them. On getting knowledge about the act of the accused persons, the complainant went to the place of occurrence and tried to stop them from carrying out their criminal act. It is thereafter stated in the complaint that the accused no.1 abused him in the name of his caste and after calling the other accused persons threatened the complainant as to how he had dared to oppose him from doing his acts. It is further stated that the other male as well as female members including the wife and daughter in law of the complainant were also abused and humiliated in the name of their caste. On the other family members of the complainant opposing the accused persons, the accused Ganga Prasad Yadav ordered the accused persons to catch hold of them on which the accused nos.1 to 4 caught hold of and humiliated his wife and daughter in law. Thereafter it is stated that the 'Saree' of his wife and daughter in law was pulled by the other accused persons was used in tying them up. On raising cry of help, it is stated that Ram Chandra Yadav hit him on his right ear with butt of 'threenaught' (arm of the bore .303) as a result of which bleeding started. His wife was also assaulted with fists and kicks and all his agricultural produce, approximate value of which would be Rs.15000/- was carried away. It is stated that the persons who had gathered there, on hulla being raised by the complainant, have seen the occurrence and that the complainant and others were untied by the complainant's son. Further allegation is that the accused Vidya Sagar Yadav took away Rs.1800/- from the pocket of the complainant besides other articles like silver chain, nokia mobile phone etc. It is finally stated that the complainant along with the members of his family had gone to the police station where the accused persons also reached and the accused wrongly stated that they have a sale deed in their favour but did not produce any such sale deed. It is stated that the complainant is in possession of the land in question and that the police authorities did not register the case due to the political influence of the other party.

On the above written complaint filed by the complainant- opposite party no.2, the Complaint Case no.226 of 2018 (Special Case no.84/2018) was registered in the Court of the learned Chief Judicial Magistrate, Supaul. In course of enquiry, the statement of the complainant was recorded on S.A. on 24.5.2018 and further in support of the complaint in course of enquiry the statement of witnesses Asarfi Sada, Rita Devi and Akali Devi were recorded. The complainant in his statement recorded under S.A supported the allegations made in the complaint. Further in course of enquiry all three witnesses namely Asarfi Sada, Rita Devi and Akali Devi supported the allegation made in the complaint to the effect that on the relevant date and time of occurrence the accused persons who were a total of 11 came to the land of the complainant, started to harvest their crop and on protest, abused them taking the name of their castes, assaulted them and thereafter took away the produce as also other articles like silver chain, mobile phone etc.

Having gone through the records of the case including the complaint and the statement of the complainant as also the three enquiry witnesses in support of

the complaint, by order dated 02.02.2019 passed in Complaint Case no. 226-C of 2018/SC/ST 83 of 2018 the learned Special Judge cum Additional District Judge, 1st Supaul was pleased to hold that prima facie case under sections 147, 341, 323 and 379 of the Indian Penal Code and section 3(1)(r) of the SC/ST Act was made out against the 11 accused persons and accordingly directed for issuance of summons against them. It would further transpire from perusal of the said order that the learned court below also went through the caste certificate produced by the complainant. It is this order taking cognizance dated 02.02.2019 that the petitioners have challenged in the instant application.

Learned counsel for the petitioners submit that the complainant in his statement on S.A. has not supported the case as stated in the complaint. It is further submitted that three enquiry witnesses who were not only interested and relative of the complainant but these witnesses have also not supported the case as made out in the complaint. Further submission on behalf of the petitioners were that the petitioner no.3 had purchased the disputed land by a registered sale deed in the year 1975. The petitioner no.3 had come in possession of the same and had started to cultivate the same since the date of purchase. It was further submitted that there was case and counter case between the parties and that the learned court below had erred in taking cognizance under section 3(1)(r) of the SC/ST Act for the reason that the occurrence had not taken place in public view.

The application was opposed by learned APP appearing for the respondent-State who submits that in a complaint case, at the stage of taking cognizance, all that the learned court had to see is whether on perusal of the complaint and the statement of the complainant and other witnesses on S.A. in course of enquiry, accepting the statements to be true, whether a prima facie case is made out in the facts and circumstances of the case. It was further submitted that in the instant case, on perusal of the material that had come on record including the complaint, the statement on S.A. of the complainant and the three enquiry witnesses, prima facie case was made out under sections 147, 341, 323 and 379 of the Indian Penal Code and also under section 3(1)(r) of the SC/ST Act.

I have perused the materials available on record and have heard the learned counsel for the respective parties.

From perusal of the statement of the witnesses it transpires that an unlawful assembly of the 11 petitioners herein proceeded to the land of the complainant and in prosecution of the common object used force in looting not only the crop cultivated by the complainant but also assaulted the complainant and the members of his family. As per the complaint, they were also tied down and besides the crops they also looted the silver chain, mobile phone etc. Thus it is evident that prima facie case is made out against the petitioners under sections 147, 341, 323 and 379 of the Indian Penal Code.

So far as the contention of the petitioners that not being in public view, no offence under section 3(1)(r) of the SC/ST Act is made out against the

petitioners, it transpires from the record that as per the complaint and statement of the witnesses the place where the occurrence is said to have taken place is an agricultural land and the time of occurrence is between 5 a.m. and 10 a.m. Thus in my opinion the contention on behalf of the petitioners that the alleged occurrence did not take place in public view is also not sustainable.

So far as the other contention on behalf of the petitioners that the petitioner no. 3 having purchased the disputed land in the year 1975 and being in possession of the same since then etc. are concerned, it is stated that the same are defence of the petitioners which cannot be looked into at this stage. The petitioners will be at liberty to raise these contentions at the appropriate stage.

In view of the facts and circumstances of the case, not finding any merit in the application nor any illegality in the order dated 02.02.2019 passed in Complaint Case no. 226-C of 2018/SC/ST -83 of 2018 by the learned Special Judge-cum-Additional District Judge 1st, Supaul, the instant application is dismissed.