
(2009) 08 PAT CK 0048
In the Patna High Court

Ram Kumar Mishra

APPELLANT

Vs

The State of Bihar and Krishna Bhowmik

RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 323, 420, 467, 468

Citation : (2009) 4 PLJR 850

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Abhijit Sinha, J.—The petitioner who has been arrayed as one of the accused in Complaint Case No. 260 of 2006 has prayed for quashing of the order dated 3.7.2007 passed therein by the learned Sub-Divisional Judicial Magistrate, Bhagalpur, whereby he has taken cognizance against the accused including the petitioner under Sections 504 and 506 (First Part) I.P.C.

2. The complainant, Krishna Bhowmick, impleaded as opposite party No. 2 herein, filed the aforesaid complaint inter alia alleging the commission of offences under Sections 420, 467, 468, 471, 323 and 120B I.P.C. at about 8.00 A.M. on 10.2.2006 and prior thereto on 10.2.2006 at the hands of the accused. According to the complainant Sneathish Bhowmick her brother-in-law (Dewar) had taken a loan of Rs.20,000/- from the Central Bank of India, Bhagalpur on 1.10.1987 in the name of his shop running in the name and style of "Bhowmick General Store" at Chhoti Khanjarpur and her husband Asish Kumar Bhowmick and her other brother-in-law (Dewar) Divashish Kumar Bhowmick had stood as Guarantors for the said loan. It is stated that since the loan could not be returned, the Bank had instituted Money Suit No. 132 of 1993 against Sneathish Bhowmick, Ashish Kumar Bhowmick and Sushma Rani Bhowmick, the mother-in-law of the complainant and the same was decreed by order dated 11.6.1999 by Subordinate Judge, 1st Court, Bhaglapur and Execution Case No. 16 of 1999 was levied by the present petitioner who was the Advocate were filed Money Suit No.

132 of 1993 and Execution case No. 16 of 1999.

3. The grievance of the complainant is that the petitioner having full knowledge that the loan had been taken by Snehashish and the two guarantors Devashish Bhawmick and Ashish had no account in the Central Bank of India and had neither taken the loan nor had the decree been passed against them yet he in conspiracy with accused No. 2 has got registered Kotwali P.S. Case No. 773 of 2004 wherein the petitioner herein had figured as the informant to unnecessarily harass her husband and brother-in-law Devashish. She claims to have given legal notices to the petitioner herein on several dates and eventually on 10.2.2006 she went to the house of the petitioner herein alongwith her husband Ashish and witnesses Sekhar Kumar Sanyal and Birendra Paswan where accused No. 2 Ravindra Kumar was present. The complainant is said to have enquired from the petitioner herein as to why he had suppressed material facts to falsely implicate her husband and Devashish in Kotwali P.S. Case No. 773 of 2004 when neither of them had taken any loan from the Central Bank of India. The two accused are said to have scolded and abused her and then she was impolitely shooed away. She claims to have visited the police station and on getting no co-operation she was compelled to file the complaint petition.

4. It has been submitted on behalf of the petitioner that he has been falsely implicated in this case since he happened to be the lawyer of the Bank and by virtue thereof had filed the Money Suit as also the Execution case without any malafide intention. It was also submitted that from the averments in the complaint petition no offence" either under Sections 504 or 506 (1st Part) I.P.C. can be said to have been made out as there was no allegation of the petitioner having indulged in intentionally insulting her or of having criminally intimidated her.

5. Learned counsel for the complainant has appeared although no show cause has been filed on her behalf. Oral submissions were sought to be advanced justifying the impugned order.

6. For an offence u/s 504 I.P.C. it is necessary that the actual words used or supposed to have been used should be mentioned in the complaint, failing which the court would not be in a position to decide whether the words used amounted to intentional insult. It is also required that the words used which amounted to intentional insult should be made such a manner as to give provocation for the commission of breach of peace. It does not appear from the complaint petition that the complainant had been provoked in any manner so as to commit breach of peace.

7. So far Section 506 I.P.C. is concerned, the intention of criminal intimidation has been defined in Section 503 I.P.C. for which punishment is provided by Section 506 I.P.C. For the ingredients under first part of Section 506 I.P.C. it is necessary that there should be threatening on person with any injury to his person reputation or property or to the person or reputation of any one in whom

that person is interested and that the threat must be with intent to cause alarm to that person or to cause to that person to do any act which he is not legally bound to do as the means of avoiding the execution of such threat or to cause that person to omit to do any act which that person is legally entitled to do as the means of avoiding the execution of such threats.

8. No such allegation appears to have been made in the complaint petition.

9. In view of the discussions made above, it is apparent that neither of the offences whereunder cognizance has been taken can be said to have been made out against the petitioner and his prosecution would amount to abuse of the process of the court.

10. Accordingly, the impugned order taking cognizance so far as the petitioner is concerned, is hereby quashed and the application is allowed.