
(2009) 08 PAT CK 0088

In the Patna High Court

Case No : Criminal Miscellaneous No. 14078 of 2007

Ram Lakhan Mahto

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 19-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 202
Penal Code, 1860 (IPC) — Section 323, 436

Citation : (2009) 4 PLJR 1046

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Anjana Prakash and Zeyaul Hoda, for the Appellant; Parthsarathi, Manish Kumar No. 2 for the O.P. No. 2 and Mr. Jharkhandi Upadhaya for the State, for the Respondent

Final Decision : Dismissed

Judgement

Abhijit Sinha, J.—The petitioner who is one of the persons arrayed as accused in Complaint Case No. 52 of 1998 and has prayed for quashing of the order dated 12.2.2007 passed by the learned 1st Additional Sessions Judge, Samastipur, in Cr. Rev. No. 169 of 2005 whereby he dismissed the said revision preferred against the order dated 5.3.2005 passed by the learned Sub Divisional Judicial Magistrate, Dalsingsarai, in the said complaint case whereby he had summoned the accused including the petitioner to face the trial for offence under Sections 323 and 436 I.P.C, and 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (hereinafter referred to as "the S.C./S.T. Act). One Chandra Lekha Devi, the complainant, impleaded as opposite party No. 2, herein filed the said complaint on 24.2.1998 inter alia alleging that at around 10.00 P.M. on 22.2.1998 while she was waiting for her husband, the accused persons including the petitioner arrived hurling abuses. It is alleged that Ram Lakhan Mahto utter " "

" It is further alleged that on hearing the orders of Ram Lakhan Mahto, Sunil

pulled the straw from the north eastern end of the house and set fire to it by means of match box. The complainant is said to have raised hulla and somehow managed to extricate her children from within the house. It is also alleged that all the accused assaulted the complainant with kicks and fists and dragged her towards the burning hut in order to throw her inside the inferno but arrival of the witnesses saved her and her children. It is said that in the process of attempting to throw her into the fire, half portion of her Saree got burnt and her hands and legs got singed. It has been stated that the house was a residential one and in the fire her bedding, clothes, utensils, food items, a Chowki and a Khatia were completely burnt causing loss of Rs. 3,000/-. It is said that the husband of the complainant is a constable in the Homeguard and on the date of occurrence, which was the date for elections for the Samastipur Assembly seat, he was on patrolling duty with the police and when at around 3.00 P.M. Sunil with his henchmen wanted to create disturbance at the polling booth the police resorted to Lathi charge. Sunil sustained injuries and that was the genesis for the present occurrence. The complainant is said to have waited for arrival of her husband and when he arrived in the afternoon of the following day, the instant case was lodged.

2. The complainant-opposite party has appeared and has filed a counter-affidavit stating detail facts and annexing copies of depositions and orders.

3. The facts which emerge from the submissions of both the parties is that at the very outset following an enquiry u/s 202 Cr. P.C. the learned Magistrate by his order dated 3.11.1998 took cognizance under Sections 436 and 323 I.P.C, as also Section 3(1)(x) of the S.C./ ST. Act against all the accused except the petitioner herein. The said order was challenged by the complainant in Cr. Rev. No. 56 of 1999 and by order dated 27.9.1999 the learned 4 Additional Sessions Judge, Samastipur, was pleased to allow the application and the impugned order with respect to not issuing summons against the petitioner herein was set aside and the matter was remitted back to the Magistrate for further enquiry. Following the remand, the learned Magistrate by his order dated 5.3.2005, was pleased to hold that a prima facie case under the aforesaid sections was also made out against the petitioner and directed for summons to be issued to him. Aggrieved by the said order the petitioner herein preferred Cr. Rev. No. 169 of 2005 before the Sessions Court which was dismissed by the impugned order dated 12.2.2007 passed by the learned 1st Additional Sessions Judge.

4. It appears that the petitioner herein had earlier filed Cr. Misc. No. 1915 of 2000 against the order dated 27.9.1999 passed by the 4th Additional Sessions Judge in Cr. Rev. No. 56 of 1999 before this Court and this Court by order dated 28.9.2000 dismissed the said miscellaneous petition.

5. The argument advanced on behalf of the petitioner is that although by order dated 27.9.1999 passed in Cr. Rev. No. 56 of 1999 direction was issued by the Sessions Court to hold further enquiry in the matter, the learned Magistrate without holding any further enquiry took cognizance against the petitioner and

directed for issuance of summons. In this context, it was submitted that since the petitioner was a Minister at the time of the occurrence he was under protection of Section 197 Cr. P.C. and the learned Magistrate had acted without jurisdiction in issuing summons without there being proper sanction for prosecution of the petitioner. It has further submitted that there was no material on record to constitute an offence under the S.C./S.T. Act and the complainant herself in her statement on S.A. had not supported the use of words "Dusadh". My attention was also drawn towards the contradictions in the statements of the witnesses In respect of the occurrence.

6. So far as the submission of protection u/s 197 Cr. P. C. is concerned, it is only available to a public servant while acting or purporting to act in discharge of his official duties. The protection u/s 197 Cr. P. C. is not available by virtue of post but by action. In the instant case the petitioner in ordering for setting on fire the hut of the complainant was definitely not acting in discharge of or purporting to act in discharge of his official duties. Therefore, the protection u/s 197 Cr. P.C. was definitely not available to the petitioner.

7. So far as the question of an offence under S.C./S.T. Act not having been made out is concerned, it will be apparent from perusal of the depositions of the witnesses which have been appended as annexures in the counter-affidavit filed by the opposite party No. 2 that the petitioner had used the word "Sala Prakashwa Dusadh". Therefore, it can not be said that an offence under the S.C./S.T. Act had not been made out against the petitioner.

8. It is true that the petitioner had not set fire to the hut but he was the person who ordered for setting on fire the hut and it was set on fire by Sunil in pursuance thereof.

9. In respect of the submission that no further enquiry was held by the learned Magistrate after remand of the case from the Sessions Court, it must be said that the "further enquiry" by itself does not mean that the Magistrate must take further evidence but also includes the liberty in the Magistrate to either take further evidence or reconsider the evidence already available on record.

10. In that view of the matter the submissions of the learned counsel for the petitioner does not come to his rescue. In the facts and circumstances of the case and the discussions made above, I find no merit in this application which is accordingly dismissed.