
(2016) 08 PAT CK 0025

In the Patna High Court

Case No : Criminal Miscellaneous No. 21234 of 2013 (Arising Out of Ps.Case No. -8 Year- 2013 Thana -Sc/st District- Sheohar)

Ram Pramod Sah

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 30-08-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 323, Section 341, Section 427, Section 435
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(x)

Citation : (2017) 1 ECRC 117

Hon'ble Judges : Rakesh Kumar, J.

Bench : Single Bench

Advocate : Mr. Madan Kumar, Advocate, for the Opposite Partys; Mr. Rajesh Mohan, Advocate, for the Petitioners

Final Decision : Allowed

Judgement

Rakesh Kumar, J.(Oral) - Heard Sri Rajesh Mohan, learned counsel for the petitioners and Sri Madan Kumar, learned Additional Public Prosecutor.

2. Five petitioners had earlier approached this court invoking its inherent jurisdiction under section 482 Code of Criminal Procedure 1973 initially with a payer to quash first information report in Sheohar S.C. S.T. P.S. Case No. 08 of 2013 registered for the offence under section 341, 323, 427, 436 and 34 of the Indian Penal Code and section 3 (1)(X) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act 1989 (hereinafter referred to as the "S.C. S.T. Act"). However during pendency of this petition since after investigation police submitted charge sheet and the learned Chief Judicial Magistrate vide its order dated 7.5.2013 took cognizance of offences under section 341, 323, 435, 427/ 34 of the Indian Penal Code and section 3(1)(x) of Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, the petitioners filed an interlocutory application vide I.A. No. 924 of 2013 for allowing the petitioners to

amend prayer in the main petition. The said interlocutory application was heard on 25.2.2014 by a bench of this court and same was allowed and directed the petitioners to amend prayer in paragraph no. 1 of the petition. Accordingly relief portion in the petition was amended by learned counsel for the petitioners and by the same order this court directed for issuance of notice to the informant / opposite party no. 2. In the meanwhile by a detailed order this court directed for staying further proceeding in Sheohar SC /ST P.S. Case No. 08 of 2013 pending in the court of Chief Judicial Magistrate, Sheohar. Despite issuance of notice to the opposite party no. 2 since the opposite party no. 2 refused to accept notice, service of notice vide order dated 17.4.2015 passed by a bench of this court was treated as valid. Finally the petition was admitted on 3.3.2016 for hearing and lower court record was summoned which has been received and kept on record.

3. Short fact of the case is that one Jagdeo Ram, son of Late Raghuvir Ram had filed a written complaint before the officer- in - charge of SC/ ST Police Station on 4.3.2013 disclosing therein that in the preceding night of ? March 2013 at about 1.30 A.M. the aforesaid petitioners arrived near the hut of Jagdeo Ram and threatened to vacate the area. The informant alleged that the accused persons abused the informant with his caste name and thereafter the accused persons set the hut of the informant on fire. Informant raised alarm, thereafter many persons arrived there. While fleeing away it was alleged that petitioners also put fire in one another hut. On the basis of written report of the informant an F.I.R. vide Sheohar S.C. S.T. P.S. Case No. 08 of 2013 was registered on 4.3.2013 for offence under section 341/ 323/ 436/ 427/ 34 of the Indian Penal Code and section 3 (1)(X) of the Scheduled Castes Scheduled Tribes (Prevention of Atrocities) Act. After registering F.I.R. police investigated the case and submitted charge sheet. After the F.I.R. it is the case of the petitioners that petitioners approached this court by filing the present petition with a plea to quash the F.I.R. in the present case on the ground that F.I.R. was lodged maliciously, however during pendency of the present petition police investigated the case and submitted charge sheet and thereafter impugned cognizance order was passed which has been assailed in the present case by filing interlocutory application as indicated herein above.

4. It is case of the petitioners that the land over which the hut of the informant and other huts were standing was purchased by the father of the petitioner no. 1, 2, 3. The land was measuring about 2 Acres 3 decimals. Thereafter it was noticed that the land in question was encroached by some persons including the informant of the present case and as such a representation was filed from the petitioners side before the Sub Divisional Magistrate, Sheohar. It is further case of the petitioners that after the land was purchased same was got mutated in the name of petitioners. Since the land in question was in illegal occupation and it was encroached from the petitioners' side legal steps were taken to get the land vacated from the encroachers. Thereafter a proceeding was initiated by the petitioners which was registered as BLDR Case No. 134 of 2011- 12 before the Deputy Collector Land Reforms, Sheohar (hereinafter referred to as "DCLR ")

under the Bihar Land Disputes Redressal Act, 2009. It has specifically been pleaded that in the said proceeding notices were issued to the encroachers including the informant of the present case. Learned counsel for the petitioners has placed reliance on Annexure- 5 to the present petition which is a photo copy of notice issued to the opposite parties in BLDR Case No. 134 of 2011-12. Learned counsel for the petitioners has pointed out that informant's name finds place at serial no. 22 in the notice. As per the pleadings in the aforesaid case D.C.L.R. after hearing the parties, directed the encroachers to vacate the land. Since the order of the DCLR whereby direction was issued for vacating the encroached land was not being implemented, the petitioners were constrained to approach this court by filing a writ petition vide CWJC No. 20451 of 2012. The said writ petition was disposed of on 5.11.2012 with observation that the DCLR and Circle Officer, Sheohar shall ensure compliance of the order dated 4.7.2012 i.e. Annexure ? 6 to the present petition i.e. whereby DCLR had directed the encroachers including the informant /opposite party no. 2 to vacate the land within a period thirty days. It would be proper to quote the order passed in CWJC No. 20451 of 2012 as follows:-

"Heard learned counsel for the petitioner and the State.

2. This writ petition has been filed for a direction to the DCLR, Sheohar for ensuring compliance of his own order dated 4.7.2012, Annexure ? 10 passed in Case No. 134 / 12-13 for which he has already issued instructions contained in letter No. 337 dated 5.7.2012 , Annexure ? 11.

3. It is submitted on behalf of the petitioner that in spite of the order and the direction contained in Annexure - 10 and 11, the Circle Officer has not ensured compliance of the said order.

4. Let DCLR and the Circle Officer, Sheohar ensure compliance of the order dated 4.7.2012, Annexure ? 10 within a reasonable time, not exceeding two months from the date of receipt / production of a copy of this order before the DCLR and the Circle Officer, Sheohar.

5. The writ petition is , accordingly, disposed of."

5. Sri Rajesh Mohan, learned counsel for the petitioners has further placed reliance on Annexure - 10 to the present petition i.e. an order contained in memo no. 170 dated 25.2.2013 issued by the Circle Officer, Sheohar which was issued in compliance with the order passed in contempt petition and CWJC No. 20451 of 2012 as well as order passed in BLDR Case No. 134 of 2012-13. By the said communication date for getting encroachment removed was fixed as 4.3.2013. The Officer -in- charge of the concerned police station was also directed to provide necessary force including female force for getting encroachment removed. On the aforesaid facts it was submitted by learned counsel for the petitioners that once date was fixed by the competent authority for removal of the encroachment by using force there was no occasion for the petitioners to take step for setting hut of the informant on fire. He submits that

in the background of the aforesaid facts it is evident that in the present case F.I.R. was lodged maliciously and with a view to further delay implementation of the order for removal of encroachment which was unauthorisedly occupied by the informant and other similarly situated encroachers. Learned counsel for the petitioners submits that it is a clear cut case of abuse of the process of law and as such this court under section 482 of the Code of Criminal Procedure is well competent to interfere in the matter. In support of his argument learned counsel for the petitioners has placed reliance on a judgment of the Apex Court reported 2013(2) PLJR 52 SC (Ravinder Singh v. Sukhbir Singh & Ors.) and (2008)12 SCC 531 (Gorige Pentaiah v. State of Andhra Pradesh And Others). He submits that if this court is satisfied that proceeding has been initiated maliciously then it is duty of this court to interfere with the matter and stop abuse of the process of law. Accordingly a prayer has been made to set aside the order of cognizance and entire proceeding in the present case.

6. Sri Madan Kumar, learned APP opposing the prayer of petitioners submits that at this initial court this court may not interfere with the matter. He submits that the plea which is being taken by the petitioners can be taken at appropriate stage i.e. at the stage of charge and at the stage of charge petitioners would be at liberty to apprise the trial court regarding the fact disclosed in the present case. He further submits that even during investigation the place of occurrence was examined and at the place of occurrence remains of fire was found and as such it has been argued that petition is liable to be rejected.

7. Besides hearing learned counsel for the parties I have perused the material available on record. It is true that at the time of exercising power under section 482 of the Code of Criminal Procedure in normal course this court may not examine any material which is not part of the record however in exceptional circumstances if a document produced before this court is un-rebuttable then certainly those documents can be examined in exceptional case. Fact remains that in the present case the petitioners were title holder of the land in question. After getting the land in question transferred through registered sale deed got the land mutated in their name. It is also evident that the land was encroached by the informant and others, thereafter a proceeding was initiated vide BLDR Case No. 134 of 2011-12 in which after notice final order was issued for removal of the encroachment. The order of this court passed in CWJC No. 20451 of 2012 dated 5.11.2012 makes it clear that even this court had issued direction to the authorities concerned to implement the order passed by the DCLR in BLDR Case 134 of 2012-13. Meaning thereby that this court had directed the authority concerned to get the encroachment removed. Annexure- 10 in the present case is a very relevant documents i.e. official order issued by the Circle Officer, Sheohar contained in memo no. 170 dated 25.2.2013 which indicates that in compliance with the order of this court as well as for implementation of the order passed in BLDR Case No. 134 of 2012-13 date for removal of encroachment was fixed on 4.3.2013. This date is very crucial in view of the facts and circumstances of the present case. Once the district administration had already taken decision

to get the encroachment removed and date was fixed to 4.3.2013 on which date the officer- in charge of the police station was asked to provide armed forces including female forces there was no occasion for the petitioners to commit the occurrence as has been alleged in the present case in the night of 3/4 March 2013. One can draw inference that in such situation in normal course one may not take any step which may create further problem in removal of the encroachment. In view of the aforesaid facts and circumstances the court is of the opinion that the F.I.R. in the present case was lodged only with a view to frustrate the order passed by this court as well as the order passed in BLDR Case No. 134 of 2011-12. It is evident that F.I.R. itself was lodged for preventing petitioners from getting peaceful possession over the land in question through process of law. In view of the facts and circumstances the court is satisfied that the present case is covered under exception 5 and 7 for interference which has been elaborated by the Hon''ble Supreme Court in a case reported in 1992 Supp (1) Supreme Court Cases 335 State Of Haryana And Others v. Bhajan Lal And Others in its paragraph no. 102 which is reproduced herein below:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under chapter XIV and of the principles of law enunciated by this court in a series of decisions relating to the exercise of the extraordinary power under article 226 or the inherent powers under section 482 of the Code which we have extracted and reproduced above, we given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise , clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials , if any, accompanying the F.I.R. do not disclose a cognisable offence, justifying an investigation by police officers under section 156(1) of the Code except under an order of a magistrate within the purview of Section 155 (2) of the Code.

(3) Where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the F.I.R. do not constitute a cognisable offence but constitute only a non-cognisable offence , no investigation is permitted by a police officer without an order of a magistrate as contemplated under section 155(2) of the Code.

(5) Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a

just conclusion that there is sufficient ground for proceeding against the accused

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and / or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party .

(7) Where a criminal proceeding is manifestly attended with malafide and / or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

8. The court proposes to incorporate paragraph no. 3 and 25 of the judgment of the Apex Court in Ravinder Singh Case (Supra) which are quoted herein below:-

"3. Shri Shekhar Naphade, learned Senior counsel appearing on behalf of the appellant, has submitted that filing the instant complaint case amounts to abuse of process of the court. The criminal complaint is barred by the principle of issue estoppel, as the same issue has been fully adjudicated by the High Court in a criminal contempt case before it, and the High Court was fully satisfied that the fault lay in the actions of Pradeep Rana, respondent no. 2, counsel for the appellant. The High Court even accepted the apology of the respondent no. 2 thereafter, and closed the said criminal proceedings at the instance of respondent no. 1. As the issue has already been adjudicated and finally closed by the High Court, the Magistrate Court cannot sit in appeal against the said order passed by the High Court, closing the said case of criminal contempt, as the subject matter and allegations of the case before him, are verbatim and have already been adjudicated.

To invoke the provisions of the Act 1989, it is not enough that the complainant belongs to a Scheduled Caste or Scheduled Tribe, as it must further be established that the alleged offence was committed with the intention to cause harm to the person belong to such category. Moreover, the term false, malicious and vexatious proceedings must be understood in a strictly legal sense and hence, intention (mens rea), to cause harm to a person belonging to such category must be finitely be established. Where genuine civil matter is sub-judice, and parties are settling their dispute in revenue courts, such proceedings must not be entertained. The High Court therefore, committed an error in rejecting the application for quashing criminal proceedings.

25. The High Court has dealt with the issue involved herein and the matter stood closed at the instance of respondent no. 1 himself. Therefore, there can be no justification whatsoever to launch criminal prosecution on that basis afresh. The inherent power of the court in dealing with an extraordinary situation is in the larger interest of administration of justice and for preventing manifest injustice a being done. Thus, it is a judicial obligation on the court to undo a wrong in course of administration of justice and to prevent continuation of unnecessary

judicial process. It may be so necessary to curb the menace of criminal prosecution as an instrument of operation of needles harassment. A person cannot be permitted to unleash vendetta to harass any person needlessly. Ex debito justitiae is in built in the inherent power of the court and the whole idea is to do real, complete and substantial justice for which the courts exist. Thus, it becomes the are paramount duty of the court to protect an apparently innocent person, not to be subjected to prosecution on the basis of wholly untenable complaint.

In view of the above, the judgment of the High Court impugned herein dated 14.12.2011 as well as of the Revisional Court is set aside. Order of the Metropolitan Magistrate dated 13.8.2009 is restored. The complaint filed by respondent no. 1 under the provisions of section 3 (1)(viii) of the Act 1989 is hereby quashed. The appeal is thus allowed.

Before parting with the case, it may be necessary to observe that any of the observations made herein shall not affect by any means either of the parties in any civil / revenue case pending before an appropriate authority / court."

9. Accordingly with a view to prevent abuse of the process of the court it is necessary for this court to interfere with the matter. Accordingly the order of cognizance i.e. the order dated 7.5.2013 passed by learned Chief Judicial Magistrate, Sheohar is hereby set aside and entire proceeding in the present case against the petitioners is set aside.

10. The petition stands allowed.