

(1976) 11 PAT CK 0008
In the Patna High Court

Ramashray Singh

APPELLANT

Vs

Dr. Anand Mohan

RESPONDENT

Date of Decision : 30-11-1976

Acts Referred:

Penal Code, 1860 (IPC) — Section 353, 500

Citation : (1977) CriLJ 1024

Hon'ble Judges : Muneshwari Sahay, J

Bench : Single Bench

Judgement

Muneshwari Sahay, J.—This application is directed against the prosecution of the petitioner in case No. C.161 of 1974 pending before a Judicial Magistrate at Siwan. The petitioner is a practising advocate at Siwan. The complaint against him was filed by the then Civil Assistant Surgeon, Siwan, Dr. Anand Mohan. In his complaint petition the complainant alleged that on the date of the occurrence at about 4.30 P.M. while he was on out-door duty and examining a patient, the petitioner went there along with another advocate and asked him to give an injection to a child which they had brought to the hospital. The doctor asked them to wait for a few minutes as the syringe was under sterilization and he himself was busy with the examination of some outdoor patients. The petitioner however, became furious at this and started hurling abusive and defamatory language against the doctor. The petitioner and his companion even used a criminal force I against the doctor with intent to prevent him from discharging his duties as a public servant and they threatened to even kill him. The complainant alleged that the petitioner had deliberately and intentionally lowered him down in the estimation of his friends, well-wishers, admirers and staff of the hospital.

2. On 4-3-1974 the Subdivisional Magistrate, Siwan, passed the impugned order taking cognizance against the petitioner for offences under Sections 353, 500 and 506(2) of the Indian Penal Code. The complainant was not examined on solemn affirmation before this order was made. The learned subdivisional

Magistrate mentioned in his order that a complaint petition had been received from Dr. Anand Mohan, Assistant Civil Surgeon, Siwan. that the allegations appeared to be prim a facie true and, therefore, cognizance was taken against the accused. In pursuance of the order of the learned Subdivisional Magistrate, summons was issued against the petitioner.

3. Learned Counsel for the petitioner submits that the learned Subdivisional Magistrate had erred in taking cognizance against the petitioner without examining the complainant on solemn affirmation. Learned Counsel has referred me to Section 200 of the Code of Criminal Procedure, 1898, (herein after to be referred to as the Code) and has pointed out that a magistrate taking cognizance of an offence on a complaint shall at once examine the complainant and the witnesses present, if any, upon oath. The proviso (aa) to Section 200 is also relevant in connection with the submissions made before me by the learned Counsel for both the sides. It reads thus-

(aa) when the complaint is made in writing, nothing herein contained shall be deemed to require the examination of a complainant in any case in which the complaint has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties.

Learned Counsel for the petitioner contends that the complainant in this case, namely, the doctor Is not entitled to th" benefit of this proviso inasmuch as he cannot be said to have filed the complaint while acting or purporting to act in the discharge of his official duties. Learned Counsel referred to me a recent decision of a Bench of the Calcutta High Court in Shyama Prasanna Das Gupta Vs. The State, where it was held relying on an earlier Bench decision of the same Court that where a police Officer investigated a private complaint and thereafter submitted a petition of complaint, he did so not as a public servant but as a complainant and as such his examination u/s 200 was essential. The Assam High Court as well took similar view, in the case of Smt. Rangamoyee Choudhury and Another Vs. Sudhir Kumar Bhowmik Kabiraj, It was held in that case that, if the complaint by a magistrate was not covered by the provisions of Section 195 of the Code, it could not be said to be a complaint filed either by a court or by a public servant in the discharge of his official duty and thus proviso to Section 200 would not be attracted. Reference was also made to the similar view taken by the Kerala High Court in K. Krishna Warriar Vs. T.R. Velunni,

4. Learned Counsel for the opposite party Submitted that the fact mentioned in the complaint showed that the offence had been committed when the complainant was performing official duty and in fact the allegations disclosed that there was an interference with him in discharge of that duty. In such circumstance, it is submitted that when the public servant, who was so obstructed in the discharge of his duty, made a complaint with regard to the offence, the complaint should be treated as a complaint by a public servant in discharge or purported discharge of his official duty. I am unable to agree with this submission. The proviso to Section 200 of the Code makes it clear that in

making the complaint the complainant must be acting or purporting to act in the discharge of his official duties. In other words, the law or his duties should enjoin upon him to make the complaint. Section 195 of the Code lays down the circumstances when a complaint by a public servant has to be filed before cognizance of the particular offence can be taken. When the law does not enjoin a duty on the public servant to make complaint and the public servant makes a complaint, he does not do so in discharge or in purported discharge of his official duty. I am satisfied that in the instant case the law did not enjoin any duty upon the doctor to make a complaint even though he might have been obstructed in the discharge of his official duty when the occurrence had taken place. Therefore, it was essential for the Subdivisional Magistrate to examine the complainant on solemn affirmation before he proceeded further in the case.

5. Learned Counsel for the petitioner has contended that in any view of the matter the non-examination of the complainant on solemn affirmation was an irregularity, as was pointed out by this Court in the case of *Sudama Singh v. Kavindra Narain Singh* (1973 PLJR 35) In the same case, however, *Untwalia J.*, (as he then was), pointed out that the irregularity, if it did not cause any substantial injustice, would be ignored should the person aggrieved come to this Court at a late stage, but it was not expedient to allow the irregularity to remain when it was immediately brought to the notice of this Court. In the instant case, the petitioner has not made any delay in coming to this Court to challenge the validity of the order passed by the learned Sub-divisional Magistrate. Therefore, when the irregularity has come to the notice of this Court at an early stage of the proceeding, it cannot be allowed to remain.

6. The result, therefore, is that the application is allowed, the order of the learned Subdivisional Magistrate dated 4-8-1974 taking cognizance against the petitioner is hereby set aside and the case is sent back to the Chief Judicial Magistrate, Siwan, who will examine the complainant On oath and then proceed according to law.