
(2001) 04 PAT CK 0029
In the Patna High Court
Case No : Criminal Revision No. 435 of 2000

Ramrati Devi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-04-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 202, 203
Penal Code, 1860 (IPC) — Section 307

Citation : (2002) 1 PLJR 9

Hon'ble Judges : S.K. Chattopadhyaya, J

Bench : Single Bench

Advocate : Sidhendra Narayan Singh, for the Appellant; Devendra Prasad Singh, for Opp. Parties 2, 4 and 6, Arun Kumar "Arun", for the Opposite Party No. 5 and , Assistant Public Prosecutor for State, for the Respondent

Final Decision : Allowed

Judgement

S.K. Chattopadhyaya, J.—Heard learned Counsel for the Petitioner, Opposite Parties 2 to 6 and the State and with their consent this application is being disposed of at the stage of admission itself.

2. The Petitioner-complainant has impugned the order of the learned Magistrate dated 12.6.2000 by reason of which he has dismissed the complaint petition. Before going to the facts in nutshell, it is pertinent to mention that on 10.1.2001 the Petitioner's counsel with reference to paragraphs 6 and 7 of the petition made a grievance that without giving any opportunity to the witnesses of the complainant to be examined the learned Magistrate dismissed the complaint on the same day when the complainant was examined on solemn affirmation. On this submission being made I called for a report from the learned Chief Judicial Magistrate, Nawadah and pursuant to that a report dated 23.1.2001 has been received. From perusal of the report it appears that the complaint petition was filed on 9.5.2000 but on the ground of ailment of the complainant a prayer was made to adjourn the case and the same was allowed by adjourning the case to

12.6.2000 for examination of the complainant. On 12.6.2000 the complainant was examined on solemn affirmation and no other witnesses were in attendance on that date and, therefore, final order was passed on the same day dismissing the complaint petition.

3. Learned Counsel for the Petitioner could not point out before the Court as to whether on 12.6.2000 the complainant after her examination on solemn affirmation filed any petition before the learned Magistrate to adjourn the case to another date in order to examine her other witnesses. Thus, in my view, the submission made on behalf of the Petitioner that no opportunity was given to examine her witnesses has no substance.

4. However, coming to the merit of the case, the argument of the learned Counsel for the Petitioner, in my view, has to be accepted. It appears from the impugned order that the learned Magistrate while making an inquiry u/s 202 of the Code of Criminal Procedure considered some materials which were not to be found in the complaint petition. According to the complainant, when the Nazir of the civil Court, Arun Kumar, had gone to her house along with some police force for getting some plots vacated, the complainant and her family members resisted that effort by stating that they had no objection to get the flats over plot numbers 343 and 346 vacated but as there was no degree in respect of plot numbers 344 and 345 over which the complainant is in possession the same could not be vacated. Further allegation is that accused Arun Kumar instigated other accused persons as a result of which family members of the complainant were assaulted and ultimately sent to jail. There are other allegations against the accused persons of looting some properties etc. but it is suffice to say that there were some allegations against the accused persons in the complaint petition.

5. The complainant in her solemn affirmation also supported the allegations but the learned Chief Judicial Magistrate dismissed the complaint petition on the finding that allegations against the accused persons are frivolous and there is no material on record to proceed against them.

6. Learned Counsel for the Petitioner strongly contended that while dismissing the complaint petition the learned Magistrate has illegally exceeded his jurisdiction by considering some extraneous matter which are not germane to the scope of Section 203 of the Code of Criminal Procedure. Elaborating his argument learned Counsel urged that when the complaint of the Petitioner was not sent to the police for investigation u/s 156(3) of the Code of Criminal Procedure and there being no report from the police about the institution of any police case against the complainant and her family members, the learned Magistrate could not have taken note of the record of Nawadah Rs. Case No. 104 of 2000 for coming to the conclusion that the allegations made in the complaint petition were frivolous.

7. On the other hand, learned Counsel appearing on behalf of contesting Opposite Parties have tried to impress upon the Court by submitting that as

because the complainant herself has admitted in her solemn affirmation that the Nazir had gone to the place of occurrence for his official business to execute a decree passed by the civil Court and when he was resisted by the Petitioner and other family members a first information report was lodged in which the son of the complainant and others were sent to jail by the same learned Chief Judicial Magistrate who has, dismissed the complaint petition. Thus, according to the counsel there is no illegality in considering the police record of Nawadah P.S. Case No. 104 of 2000.

8. The scope of inquiry u/s 202 of the Code of Criminal Procedure has been explained by the Supreme Court as well as this Court several times. In the case of Gajendra Swaroop Srivastava v. Baleshwari Prasad Kesari 1987 BBCJ 792 : 1987 PLJR 751 (Full Bench) the Full Bench has observed in paragraph 16 as follows:

It is then significant to notice that Section 203 is in terms specific with regard to the materials on the basis of which complaint is to be dismissed at the threshold without issue of process to the accused. It expressly mandates what has to be considered therefore, namely, (i) the statement on oath of the complainant, (ii) the statements of the witnesses adduced on behalf of the complainant, and (iii) the result of the enquiry or investigation, if any.

9. Admittedly in this case no inquiry was ordered by the learned Magistrate u/s 156(3) of the Code of Criminal Procedure and so there was no scope of considering the result of any inquiry or investigation. The only material before the learned Magistrate was statement on oath of the complainant and the allegations made in the complaint petition. On the other hand, learned Magistrate has observed in his impugned order that "There had been a police case against the husband of the complainant lady and others u/s 307 I.P.C. read with the Penal Provision of the Explosive Substances Act on charges of resisting the due execution of the decree and causing murderous attack on the execution team. Police allegedly recovered some explosives also from the P.O. as an evidence of explosion of bombs which is apparent from the record of the police case (Nawadah Rs. Case No. 104 of 2000) of which the husband of the complainant and others are accused".

10. In my view, the consideration of, materials from the records of the said P.S. Case is definitely extraneous consideration and not within the scope of inquiry u/s 202 of the Code of Criminal Procedure as laid down by the Full Bench. The learned Magistrate would have been well advised to leave aside his personal knowledge about the case instituted by the police against the husband of the complainant and others giving rise to Nawadah P.S. Case No. 104 of 2000. It is not necessary that allegations made in a complaint petition will always be genuine. Sometimes vexatious allegations are made in order to take vengeance against an individual and, therefore, the law mandates the Court to consider the allegations judicially and to pass orders in accordance with law. Only because a complaint petition is filed and so process has to be issued is not an universal rule

but while making an inquiry u/s 202 of the Code of Criminal Procedure the learned Magistrate is required to apply his judicial mind to find out as to whether cognizance should be taken or the complaint petition should be dismissed. In the facts and circumstances, in my view, the order impugned cannot be sustained in law.

11. In the result, this application is allowed. The order dated 12.6.2000 is set aside and the matter is remitted to the learned Chief Judicial Magistrate for considering the allegations made in the complaint petition along with the statement of the complainant on solemn affirmation in the light of observations made by this Court in the case of Gajendra Swaroop Srivastava (supra).