

(2012) 05 PAT CK 0049

In the Patna High Court

Case No : Criminal Miscellaneous No. 12315 of 2007

Sachidanand Singh and Ashwani Kumar Pandey

APPELLANT

Vs

The state of Bihar and Ajay Kumar Pathak

RESPONDENT

Date of Decision : 07-05-2012

Acts Referred:

Constitution of India, 1950 — Article 20(2)

Criminal Procedure Code, 1973 (CrPC) — Section 202, 300, 482

Penal Code, 1860 (IPC) — Section 120B, 156(3), 182, 211, 380

Citation : (2012) 05 PAT CK 0049

Hon'ble Judges : Ashwani Kumar Singh, J

Bench : Single Bench

Advocate : S.D. Sanjay, for the Appellant; Ashutosh Ranjan Pandey, Prabhat Ranjan Singh For the Opposite Party and Ms. Veena Kumari Jaiswal, A.P.P For the State, for the Respondent

Judgement

Honourable Mr. Justice Ashwani Kumar Singh

1. Initially the present application was filed on behalf of three petitioners. During pendency of the petition before this Court, the petitioner No. 3 died on 23.3.2008. An affidavit in this regard was filed and thus by order dated 22.4.2009, the name of petitioner No. 3 Satyadeo Prasad Keshri was deleted. The petitioners, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure (hereinafter referred to as "the Code") have prayed for quashing of the order dated 17.1.2007 passed by learned Sub-divisional Judicial Magistrate, Bikramganj, Rohtas (Sasaram) in complaint Case No. 151 of 2006 by which finding a prima facie case to be made out u/s 380 of the Indian Penal Code, they were summoned to face trial. It is stated that initially a complaint was filed by the Opposite Party No. 2 in the Court of learned Sub-divisional Judicial Magistrate, Bikramganj, Rohtas (Sasaram). The court referred the complaint to the police to register F.I.R. and investigate the case in exercise of powers conferred u/s 156(3) of the Code. Accordingly, Dawat P.S. Case No. 6 of 2005 was registered under Sections 380, 420, and 120B of the Indian Penal

Code against the petitioners and investigation was taken up. In the F.I.R. it was alleged that the informant was grand son of late Pandit Jagnarain Dubey who donated 60 bighas of land for establishing a school and constituting a trust. Certain development work was going on in the school from the development fund departmentally through the Contractor who is also the clerk of the school. While executing the work, some old constructions were demolished out of which costly materials like wood logs etc. were extracted for selling in auction in the school premises. The accused persons by entering into a conspiracy stealthily removed the wood logs etc. causing loss to the school. The accused persons carried those wood logs and other materials on tractor and one of the witnesses communicated to the family members of the donor, on which the informant along with others went to the school and found that the wood logs were loaded on a tractor and the accused persons were following it. When it was asked from the accused persons as to whether the wood logs were being taken without auction sale, they replied that the informant had no business to ask such question as he was not concerned with the school in question since the school was already nationalized. In the end, the informant has alleged that with a view to misappropriate the property of the school he was ousted from the development committee of the school and thereafter the accused persons in conspiracy with each other committed theft of wood logs from the school and carried the same on a tractor.

2. The police after registering the case, took up investigation and on completion of investigation submitted a final report on 31.3.2005 stating therein that the accusation was palpably false and the police further recommended for initiating a proceeding against the informant u/s 182/211 of the Indian Penal Code for launching a false prosecution. The final report submitted by the police has been brought on record as Annexure-2 to the petition. Learned counsel for the petitioners referring to the final report submits that in course of investigation the police found that the informant was illegally cultivating 1 bigha and 16 kathas land of the school, but when petitioner no.1 Sachida Nand Singh joined as Principal of school he got the land released from illegal possession of the informant and auctioned the same for the purposes of cultivation. The amount received from such auction was being invested in development of the school. A development committee was constituted in the school in which the informant was not included as member and it was due to this reason the informant had launched a false prosecution. The police report would further show that the wood logs taken out from old constructions were found present in the school on physical verification by the police. During pendency of the investigation, it appears that after submission of final report the informant filed a protest petition in the Court of learned S.D.J.M., Bikramganj, Rohtas. The learned S.D.J.M., Bikramganj, Rohtas by order 22.3.2006 directed the protest petition filed on behalf of the informant to be treated as complaint. Accordingly, a complaint case No. 151 of 2006 got instituted. The complainant was examined and in course of enquiry, five witnesses namely, E.W.1 Shiv Kumar Upadhyay, E.W.2 Mahendra Singh, E.W. 3 Naradmuni Pandey, E.W.4 Mahendra Singh and E.W. 5 Sharvan

Singh were examined u/s 202 of the Code of Criminal Procedure. The learned S.D.J.M., Bikramganj, Rohtas by order dated 17.1.2007 found a prima facie case to be made out u/s 380 of the Indian Penal Code against the petitioners and thus summoned them for facing trial. It is against that order the present application has been filed on behalf of the petitioners u/s 482 of the Code of Criminal Procedure. It is submitted that the impugned order of cognizance of the offence and summoning of the petitioners is an abuse of process of Court. The entire criminal proceeding is nothing but a vexatious prosecution launched by complainant in order to wreck vengeance due to the personal grudge and even if the allegations are taken on its face value, no cognizable offence is made out much less any offence u/s 380 of the Indian Penal Code.

3. It is further submitted that the petitioner No. 1 was the Head Master in the school in the year 2005 and he retired from service on 31.5.2006. The petitioner No. 2 is the clerk in the school in question who was departmentally constructing RCC roof for the development of the school. Admittedly, the school, namely, Jag Narayan Uchch Vidyalaya is a nationalized school and is governed by the statutory provision of the State. The Managing Committee had been constituted for supervision of development work in the school. The Managing committee was looking after the developmental work and there was no question of any removal of school property and had that been so instead of the informant, the District Magistrate cum Collector or the District Education Officer or District Superintendent of Education would have taken action against the petitioners for causing loss to the government. A false complaint was instituted with oblique motive by the complainant which was referred to the police and upon investigation the police found no substance in the allegation and that is why while submitting final report it was recommended that the complainant be prosecuted for launching false prosecution u/s 182/211 of the Indian Penal Code.

4. Learned counsel for the complainant submits that apart from launching a criminal prosecution, the complainant also filed a petition before the Director, Secondary Education, Bihar, Patna. The Director, Secondary Education immediately entrusted an enquiry with respect to the allegation made by the complainant to the District Education Officer, Rohtas, Sasaram. The District Education Officer, Rohtas, Sasaram finding altogether 12 charges on the basis of allegation made by the complainant conducted a domestic enquiry. He also made a physical verification of the school in question. On conclusion of enquiry, the Enquiry Officer i.e. District Education Officer, Rohtas, Sasaram, vide his memo no. 29 dated 14.1.2006, which has been brought on record as Annexure-5 to the petition, opined that the allegations made by the complainant were all false, concocted and without any basis. He has also held that the complainant has got prejudice and bias against the petitioners and recommended for exonerating the petitioners from the charges made against them.

5. Having perused the report of the Enquiry Officer, I find that apart from what has been alleged in the F.I.R. the complainant has made several other allegations

also, however, none of the allegations were found to be true in course of the enquiry by the Enquiry Officer. The disciplinary authority, i.e., the Director, Secondary Education, Bihar, Patna on receipt of the enquiry report, by his office order bearing memo no. 1437 dated 18.5.2006 exonerated the petitioners from the allegations made by the complainant in a proceeding initiated departmentally. The said office order has also been brought on record as Annexure-5 to the petition. A supplementary affidavit has also been filed in this case on behalf of the petitioners, bringing on record the deposition of witnesses examined in course of enquiry.

6. On behalf of the Opposite Party No. 2 a counter affidavit has been filed in this case and it has been contended therein that his ancestor namely, Jag Narayan Dubey had donated 60 bighas of land situated in Mouza Koath Jubni and established Jag Narayan Uchh Vidyalaya, about 80-90 years ago. The property donated by the ancestor of Opposite Party No. 2 was being looted and the petitioners were committing theft and misappropriating the property of the school and as such the Opposite Party No. 2 was compelled to institute the case. The local police in collusion with the petitioners submitted a final report. The witnesses examined in course of enquiry have supported the case of complainant and thus it is submitted that impugned order passed by the learned Magistrate taking cognizance of the offence u/s 380 of the I.P.C. requires no interference.

7. Having heard the parties at length and looking into the facts and circumstances of the case I am of the view that the continuation of the proceeding on the basis of summoning order dated 17.1.2007 would be an abuse of process of Court. The allegation seems to be baseless and without any foundation. On the face of it, it looks that criminal complaint initiated by the Opposite Party No. 2 has been filed with an oblique motive. Legally even if the police submits final report; the court may differ with it and take cognizance of the offence on the basis of materials available on record. In the present case the court has not differed with the police report. The court has proceeded on the basis of a complaint. It cannot be said that the Court had no jurisdiction to take cognizance of the offence if the complainant and the witnesses supported the allegation but in exercise of powers conferred u/s 482 of the Code if the court finds the action on the part of the complainant to be mala fide, it may interfere with such order taking cognizance. The court with a view to maintain parity in the administration of justice would not allow abuse of the process of the court. Here in present case, I find that not only the police found the allegations to be false even the departmental authorities who initiated a proceeding against the petitioners on the basis of the allegation made by the complainant exonerated the petitioners from the charges. The allegations were the same as alleged in the complaint apart from some other allegations. The authorities made an on the spot enquiry and found the allegations palpably false. In a recent judgment, the Apex Court in case of Radheshyam Kejriwal Vs. State of West Bengal and Another, in paragraphs 38 and 39 held as under:

38. The ratio which can be culled out from these decisions can broadly be stated as follows:

- (i) Adjudication proceedings and criminal prosecution can be launched simultaneously;
- (ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;
- (iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;
- (iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;
- (v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court or law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;
- (vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and
- (vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.\\

39. In our opinion, therefore, the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court.

8. In the light of the observation made by the Apex Court in case of *Radheshyam Kejriwal* (supra) I find from the material available on record that the charges for which the petitioners were departmentally proceeded against as well as charges made in the complaint in the present case are identical. The petitioners have been exonerated in the disciplinary proceeding on merits. Taking into consideration the facts and circumstances of the case allowing the prosecution to continue would certainly be an abuse of the process of court. In the result, I allow this petition and quash the entire proceedings of complaint case no. 151 of 2006 including the order dated 17.1.2007 passed in the aforesaid case pending in the court of Sub Divisional Judicial Magistrate, Bikramganj, Rohtas.