

(2010) 09 PAT CK 0098

In the Patna High Court

Case No : Criminal Miscellaneous No. 1580 of 2003

Sadre Alam

APPELLANT

Vs

The State of Bihar and Janardhan Hembrum

RESPONDENT

Date of Decision : 01-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 323, 341, 504

Citation : (2010) 09 PAT CK 0098

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—The petitioner, who was at the relevant time Principal of Arts & Crafts College, Budha Colony, Patna, has approached this Court, while ng its inherent jurisdiction u/s 482 of the Code of al Procedure, with a prayer to quash an order dated 29.07.2002 by the learned Judicial Magistrate, 1st Class, Patna in Complaint No. 552(C) of 2002, Trial No. 1592 of 2002.

2. Short fact of the case is that Opp.Party No. 2 filed a complaint in the court of the learned Chief Judicial Magistrate, Patna, which was registered as Complaint Case No. 552C of 2002. In the complaint petition, it was alleged that the complainant had approached the petitioner for payment of his due salary of 18 days, i.e. from 1.9.2000 to 18.09.2000. However, when the petitioner was approached by the complainant, he was abused and also assaulted. The complainant alleged that he was member of Scheduled Tribe and while abusing, the petitioner had also committed offence under provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. After filing of the complaint, the complainant produced two witnesses in support of his complaint, namely, Dharmendra Kumar and Raj Kumar. After conducting enquiry, the learned Magistrate by an impugned order, i.e. order dated 29.7.2002 took cognizance of offences under Sections 323, 341, 504 of the Indian Penal Code and directed for

summoning the petitioner.

3. Aggrieved with the order of cognizance, the petitioner approached this Court by filing the present petition. On 18.4.2003, while issuing notice to Opp.Party No. 2, this Court directed that in the meantime, further proceeding pending in the court of learned Judicial Magistrate, 1st Class, Patna in Complaint Case No. 552 (C)/2002, and Tr. No. 1592 of 2002 shall remain stayed. Subsequently, on 19.10.2005, the case was admitted for hearing and it was directed that during the pendency of this application, interim order passed on 18.4.2003 shall remain operative. The order of stay is still continuing.

4. Despit the fact that Opp.Party No. 2 has entered his appearance through his Advocate, at the time of hearing none has come forward on his behalf.

5. In this case, earlier lower court record was called for and the same is lying with the record of the present case.

6. Learned Counsel appearing on behalf of the petitioner, while challenging the order of cognizance submits that the present case was filed in a well designed manner. It was submitted that the complainant was a peon in the Arts and Crafts College, where the petitioner was Principal. Since the appointment of the petitioner was made illegally by the predecessor of the petitioner, as per the order of the Vice-Chancellor, the petitioner had issued an order of termination of service of the complainant. Along with the complainant about eight class III and IV employees were terminated from the service. Learned Counsel for the petitioner has referred to Annexure-3 to the petition, which is an Office Order No. 287/2000 dated 30th September, 2000 issued under the signature of the petitioner. It was submitted that since the complainant was terminated from the service under order of the petitioner, the complainant in connivance with other two persons, who were similarly terminated from the service, had filed the present complaint petition. Learned Counsel for the petitioner has specifically referred to page-15 of the complaint petition to show that the complainant had cited Dharmendra Kumar and Raj Kumar as witnesses in support of the complaint case. It was further submitted, while referring to Annexure-3 to the petition, that the names of Raj Kumar Ram and Dharmendra Kumar find place at Serial No. 7 and 8 respectively in the office order No. 287/2000 dated 30th September, 2000, who were examined as witnesses in support of the complainant's case. It was submitted that since the complaint petition was filed by the complainant/ opp.party No. 2 maliciously, the order of cognizance and the entire proceeding is liable to be set aside.

7. Sri Anuj Kumar Srivastava, learned Addl.Public Prosecutor appearing on behalf of the State has opposed the prayer of the petitioner.

8. Besides hearing learned Counsel for the petitioner and the State, I have also perused the materials available on record as well as lower court record, which was summoned by this Court. After going through the materials available on record, it is evident that the complainant and his two witnesses were terminated

by the order issued under the signature of the petitioner, which is at Annexure-3 to the present petition. Moreover, the allegation made in the complaint petition appears to be not probable and, as such, the Court is of the view that allowing the prosecution of the petitioner on such a complaint petition will amount to allowing the abuse of the process of the court. It is necessary to interfere with the order of cognizance.

9. Accordingly, the order dated 29.7.2002 passed in Complaint Case No. 552C of 2002, Trial No. 1592 of 2002 by the learned Judicial Magistrate, 1st Class, Patna is hereby set aside and the petition stands allowed.