
(1995) 02 PAT CK 0024

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 531 of 1991 (R)

Sakal Deep Upadhayaya

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 20-02-1995

Acts Referred:

Citation : (1995) 02 PAT CK 0024

Final Decision : Dismissed

Judgement

S.K. Chattopadhyaya, J.—The petitioner has invoked the jurisdiction of this Court under Articles 226 and 227 of the Constitution with a prayer to quash the first information report lodged against him under Sections 417, 418, 420 and 468 of the Indian Penal Code.

2. The facts of the case lie in a narrow compass :

An F.I.R. was lodged against the petitioner by respondent No.2, the Registrar, Ranchi University alleging, inter alia, that the petitioner who is a contractor, was entrusted with the construction of buildings of post graduate Centre at Chaibasa. Tender was invited and after scrutinising the same work had been entrusted with the petitioner as per agreement dated 14.9.1985. The work was to be completed within 9 months from the date of commencement of the order but it was extended from time to time. Running bills were being submitted by the petitioner and the work was certified by their own firm, namely, M/s Verma and Associates. The University against those running bills paid a total sum of Rs. 24, 35, 209.89 on the recommendations of the said firm, the co-accused. By letter dated 29.4, 1991 the said firm informed the University that the petitioner has completed all works except the internal electriciation and suggested that the building be taken over by the University. In reply to the same by letter dated 16.10.92 die University requested the firm to furnish the documents for the purpose of inspection and for taking over of the said building. Some papers were supplied but the firm did not supply the work diagram and ultimately a team of officers was sent to Chaibasa on 24.8.1993 for making inspection at the spot, for

preparing inventory and to submit a report regarding the present position of the building.

The team so constituted found that the construction of the building was such that it was not at all worth taking possession. According to the report almost all the walls developed cracks and the foundation was very weak. Most of the beams were supported on brick walls and not on RCC column. The mortar used was of a very poor quality and the same can be crushed to powder in hand. This report was submitted by the team on 15.9.1993. Subsequently, it transpired that the petitioner in connivance with the firm submitted false bills with false certificates in the University office and thereby intentionally induced the University officers to pay a huge amount as mentioned above. Further allegation in the F.I.R. is that the construction has been made not in accordance with the specification but even then the petitioner received the said amount by cheating the University. On the basis of the said information the police lodged a case as Kotwali P.S. Case No. 423/94 dated 25.8.1994.

3. Mr. Bajaj appearing on behalf of the petitioner has contended that from the allegation made in the F.I.R. it is crystal clear that the dispute is of civil nature and, as such, no criminal case could have been instituted against the petitioner. Secondly, it is submitted that the petitioner has already filed a title Suit No. 64/94 against the University with a prayer to refer the matter to the arbitrator for arbitration and by letter dated 27.4.1994 the Registrar requested Mr. Mehta, Advocate to act as an Arbitrator, So, Mr. Bajaj contends that upto 27.4.1994 the University did not find time to lodge any F.I.R. and only because the petitioner filed the aforesaid title suit alleging, inter alia, that the petitioner was entitled to get eleven lacs and odd from the University, as a counter blast, this F.I.R. was lodged. Referring to various annexures annexed to the writ application, it is contended that on 29.4.1991 a notice was given to the University to take over the possession but the F.I.R. shows only on 6.2.1993 the University team and visited Chaibasa and found the building in that condition. Relying on a decision rendered in the case of Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others, , Mr. Bajaj has concluded his argument by submitting that under similar circumstance the Supreme Court has quashed the whole prosecution.

4. Mr. Sohail Anwar appearing on behalf of the informant, Respondent No.2, on the contrary, has submitted that the High Court while exercising its jurisdiction under Article 226 of the Constitution, will not look into the documents which are annexed with the writ application. It is next contended that it is now well settled that same set of facts can give rise to both civil and criminal liability. In support of his argument he has relied on the case of Jaswantrao Manilal Akhaney Vs. The State of Bombay, .

5. In the case of State of State of Haryana and others Vs. Ch. Bhajan Lal and others, , their lordships of the Supreme Court have given the guide-lines under which a F.I.R. can be quashed but in the same decision their Lordships have also

observed that power of quashing a criminal proceeding should be exercised sparingly and with circumspection and that too in the rarest of rare cases. The court will not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. Similarly, in the case of State of Bihar and Another Vs. P.P. Sharma, IAS and Another, and in the case of Minakshi Bala Vs. Sudhir Kumar and Others, , their Lordships have categorically held that the High Court cannot quash a criminal proceeding by treating the annexures and affidavits as the documents of evidence.

6. Having noticed the aforesaid authoritative decisions of the Hon"ble Supreme Court as well as the allegations made in the F.I.R. I am of the view that at this stage the High Court is not entitled to look into the annexures referred to by the learned Counsel for the petitioner. Those documents may be good defence for the petitioner before the trial court but the High Court will not convert itself into a trial court by scrutinising those evidences at this stage.

7. In the result, I find no merit in this writ application which is, accordingly, dismissed. The interim order passed on 26.9.1994 is vacated.