
(2000) 01 PAT CK 0061

In the Patna High Court

Case No : C.W.J.C. No's. 7296 of 1995, 2647 and 4247 of 1996 and 764 of 1998

Sanjay Kumar Choudhary and Others

APPELLANT

Vs

Rajendra Agricultural University and Others

RESPONDENT

Date of Decision : 19-01-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 182, 482
Penal Code, 1860 (IPC) — Section 482, 499, 500, 501

Citation : (2000) 2 BLJR 1124 : (2000) 2 PLJR 209

Hon'ble Judges : Shiva Kirti Singh, J;N. Pandey, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N. Pandey, J.—This criminal miscellaneous petition has been filed by the petitioners Smt. Jagjit Kaur and her father Balwant Singh under the provisions of Section 482 of the Criminal Procedure Code for quashing the order dated 7.4.1995 passed by the learned A.C.J.M., Danapur in Complaint Case No. 43(C)/95 by virtue, of which on the complaint so made by opposite party No. 2 Lt. Col. Harjit Singh, cognizance of the offence is taken under Sections, 500 and 501, I.P.C. against the present petitioners.

2. It transpires that by order dated 1.3.1996, this Court was pleaded to stay the further proceedings and the matter being admitted is listed today for hearing.

3. Heard Shri Rajendra Kumar Giri, learned Counsel for the petitioners and Shri Chittaranjan Sinha, learned Counsel representing O.P. No. 2. The State is being represented by Shri K.V. Narayan, learned Additional Public Prosecutor who is also heard. On behalf of the petitioners, it is pointed out that cognizance of the offence taken under Sections 500/501, I.P.C. is bad in law because taking the worse view, the petitioners come under the exceptions 8 and 10 of Section 499 of the I.P.C.. In this context, reference is made to Annexure-3 and it is submitted that the matter was simply reported to the higher authority with regard to the conduct of O.P. No. 2 who was having his relation with Miss Lemla Long Khimer

@ Shashi Lemla. It is pointed out that petitioner No. 1 Jagjit Kaur being not legally divorced, O.P. No. 2 was having such connection and it is just for the protection of her interest that Jagjit Kaur in writing made a complaint to the higher Army Officer against O.P. No. 2 and by the plain Reading of Exceptions 8 and 10 of Section 499, I.P.C, it will transpire that such protest was, made exposing the Activities of O.P. No. 2 cannot be said coming under the purview of defamation and in that light the impugned order requires interference and the prayer so made for quashing the whole proceedings be thus considered favourably in the light of the inherent powers so contained u/s 482, Cr.P.C. by which this Court can very well interfere with the order of cognizance. In support of this contention, the learned Counsel for the petitioner has also referred to Annexures-5, 6, 6-A, 9 and 12 of the rejoinder petition so filed. It is submitted that by looking into those Annexures, it will transpire that the said Manipuri lady, named above, was very much staying with O.P. No. 2 and because of this illicit connection, O.P. No. 2 was blessed with two daughters and in the voters" list, the name of the lady is shown as the wife of O.P. No. 2 whereas the two issues from the Manipuri lady continuing their studies, the name of O.P. No. 2 finds place as the father. In support of his contention that the impugned order requires interference and the powers u/s 482, Cr.P.C. in such circumstances, can well be invoked, the learned Counsel for the petitioners, has relied upon a case reported in Romesh Roy Vs. The King, and it is pointed out that when protection u/s 499 exception of is so sought for the accused need not prove the allegations to be true. It is enough to show that he had reasonable grounds to believe in allegations. On behalf of the petitioners, a reference has also been made to the provisions of Section 182 of the Cr.P.C and it is pointed out that the learned Court below taking cognizance rather had no jurisdiction as to take the cognizance because the letter being addressed to the superior Army Officer was sent from Delhi and the same was so received even at Delhi itself. All other grounds so good grounds for interference with the impugned orders are pressed into service. Lastly, it is submitted that it is all in good faith that such letter by way of protest was so addressed to the superior Army Officer for the petitioners" own interest and for simply keeping a check upon the conduct of O.P. No. 2 and had no malice in any way to malign him or his character by sending such protest letter which was in no way defamatory or can no account be said to be putting any imputation. The other side"s lawyer, on the other hand, has submitted that by the plain reading of the contents of Annexure-3 which is on the record, it will transpire that petitioner No. 1 Smt. Jagjit Kaur, as a matter of fact, wanted to harm the moral and intellectual character of O.P. No. 2 and there was sufficient prima facie material before the learned Court below of defamatory imputation made by her against O.P. No. 2 and, thus, the learned Court below was perfectly justified in taking cognizance of the offence finding prima fade material which, thus, does not warrant any interference. It is also pointed out that the contents of the impugned order can in no account be said to be abuse of the process of the Court of while entertaining application filed u/s 482, Cr.P.C., the Court has to exercise such inherent powers sparingly and as far as the present case is

concerned, the petitioner has failed to make out any case for interference. On behalf of O.P. No. 2 reported cases have been referred in support of his contention that u/s 482, Cr.P.C. sparingly such power can be exercised after due consideration. Those reported cases are State of Bihar Vs. Murad Ali Khan and Others, . particularly para 6 of the reported case was referred. Another reported case so relied upon is Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, .

4. Para-6 of the report case State of Bihar Vs. Murad Ali Khan and Others, , runs as under:

...jurisdiction u/s 482, Cr.P.C. which saves the inherent power of the High Court, to make such orders as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice, has to be exercised sparingly and with circumspection. In exercising that jurisdiction the High Court would not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not. That is the function of the trial Magistrate when the evidence comes before him....

5. It has also been submitted on behalf of O.P. No. 2 that proceeding against the accused can only be quashed at the initial stage invoking the powers u/s 482, Cr.P.C. if on the fact of the complaint or the papers accompanying the same, no offence is constituted. In this background of the said principles of law, it is, thus, submitted that in the instant case by plain reading of Annexure-3, it will transpire that the ingredients of Section 499 are made out and on no account can at this stage be said that it comes within the Exceptions 8/10 of Section 499, I.P.C. In support of his contention above, the other allegations so put, the learned Counsel for O.P. No. 2 has referred to inner page 9 of the relief portion (c) of the said protest petition so filed by petitioner No. 1 addressed to the Senior Army Officer in which she. is very specific in saying that such protest petition is filed as to enable the former to assess the conduct of O.P. No. 2, as such, and constantly watch his activities rather remand alert about his integrity and loyalty of the latter towards the country as a whole. The allegation being of such nature, thus, has greatly harmed the reputation of O.P. No. 2. It is submitted that O.P. No. 2 is an upright and honest officer and such language used in the publication which writing can well be said to meet the ingredients of Section 499, I.P.C. and in that light, thus, rightly prima facie finding material, cognizance of offence is taken. The point so raised with regard to the jurisdiction of the Court taking cognizance of the offence, the learned Counsel for opposite party No. 2 has submitted that in this connection, the present petitioner had already filed a transfer petition before the Apex Court and this ground was very much taken and the Apex Court dismissed the petition and the reference has been made to Annexures-A, B and C of the counter petition so filed on behalf of O.P. No. 2. In the background of all the facts, hence, the prayer is that, since there is no criminal field u/s 482, Cr.P.C., the same be dismissed.

6. After hearing both the side's lawyers, I have carefully gone through the

contents (sic) with that of the counter-affidavit and rejoinder petition so filed. I have also carefully looked into the reported cases so detailed above and the reference so made on behalf of the learned Counsel for the petitioner with regard to the petitioners' coming under Exceptions 8 and 10 of the Section 499, I.P.C. and the petitioner filed under the provisions of Section 482, Cr.P.C. In my considered opinion, in the instant case, the writer of Annexure-No. 3, i.e., Mrs. Kaur was expected to tie within the bounds of substantial truth that too was expected of her to file her protest in good faith which" would have only brought her in Exception and furthermore for determining the same, the circumstances of the case are to be looked into which at this preliminary stage cannot be threadbare discussed rather by the plain reading of Annexure-3 in my considered opinion, the learned Court below was justified in finding prima facie case as to take cognizance of the offence summoning the accused to face the trial. That being the position, in my considered opinion, the petitioners have failed to make out a case for interference by invoking the powers u/s 482, Cr.P.C. and grant of prayer so made by quashing the proceeding which is so thus not considered. Finding no merit in this petition, the same is hereby dismissed. The previous order passed in this case staying the further proceeding stands vacated.