

(2010) 08 JH CK 0068
In the Jharkhand High Court

Sanjeev Kumar Jalan and Rajeev Jalan @ Banti Jalan	APPELLANT
Vs	
State of Jharkhand and Pyare Lal Das	RESPONDENT

Date of Decision : 13-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 144, 482
Penal Code, 1860 (IPC) — Section 182, 211, 323, 379, 500
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3, 4

Citation : (2010) 4 JLJR 253

Hon'ble Judges : D.G.R. Patnaik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—Heard the learned Counsel for the petitioners, learned Counsel for the State and the learned Counsel for the Opposite Party No. 2.

2. The instant application u/s 482 of the Cr.P.C. has been filed by the petitioners, praying for quashing the impugned order dated-25.09.2006, passed by the Chief Judicial Magistrate, Giridih in Complaint Case No. 437 of 2006, whereby cognizance of the offences under Sections 323 and 379 of the I.P.C. and Sections 3 and 4 of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, was taken against the petitioners, whereafter the case was transferred to the Court of the S.D.J.M., Giridih.

3. The facts in brief, relevant for the disposal of this case, are as follows:

A complaint case was lodged by the Opposite Party No. 2, Pyare Lal Das before the Chief Judicial Magistrate, Giridih on 13.04.2006, alleging therein that the petitioners along with others, had visited his land and tried to forcibly grab his land and had started raising some illegal constructions thereon. His complaints to the Police did not yield any prompt relief. Thereafter, he filed an application before the Sub-Divisional Magistrate, Giridih for restraining the petitioners from

illegally encroaching upon his land. Subsequently on the alleged date of occurrence, while the complainant was on his way to the market to buy some house-hold goods, he saw that the petitioners alongwith some labourers were constructing boundary wall over his land. On his protest, the accused persons allegedly abused and assaulted the complainant/Opposite Party No. 2 by referring to his caste and had threatened him with dire consequences, if he raise any objections. He has further alleged that in course of the scuffle, the accused persons dishonestly removed a sum of Rs. 530/-from his pocket. On his alarms, some persons from his nearby village rushed to rescue him and upon seeing them the accused petitioners fled away.

In course of the enquiry conducted by the court below, the complainant and his witnesses were examined and on the basis of their statements, the learned court below took cognizance for the aforementioned offences.

4. The petitioners have assailed the impugned order of cognizance and the continuation of the criminal proceedings against them mainly on the ground that the impugned order has been passed by the court below without application of judicial mind to the admitted facts of the case which would amply declare that a dispute in respect of the land in question, was pending since long between the petitioners and the complainant and that the land belongs exclusively to the petitioners who have mortgaged the same with the Union Bank of India, Giridih Branch way back in 1999 for the purposes of obtaining loan and as such, the petitioners have every right to construct the boundary wall over the lands and to use the same in accordance with their own choice.

5. Learned Counsel for the petitioners explains that in the complaint filed by the Opposite Party No. 2, a proceeding u/s 144 of the Cr.P.C was initiated., in which a Report from the Police was called for. The Police Report had confirmed that the petitioners are the rightful owners of the land in question and the same is in their possession. The complainant has suppressed all the material facts and thereby, has mislead the court below to believe the statements of the complainant as prima facie true.

Learned Counsel submits further, that the facts would amply demonstrate that the complainant, with a revengeful and malicious motive, has filed the case entirely on false allegations. The entire story as created by the complainant in his allegations are false and highly improbable as because, there could be no occasion for the petitioners to indulge in any such acts of offence against the complainant, since admittedly, the land was already in their possession. The continuation of such proceedings against the petitioners is entirely an abuse of the process of Court.

In support of his arguments, learned Counsel refers to the judgment of the Supreme Court in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, .

6. Learned Counsel for the Opposite Party No. 2 on the other hand would argue

that the learned court below has acted on the basis of the statements of the complainant, which finds support from the statements of his witnesses recorded in course of enquiry and while taking cognizance, the learned court below is only required to consider as to whether the materials available on record would make out, prima facie any offence. Learned Counsel argues that the grounds taken by the petitioners are not such, as could be appreciated at the stage of cognizance. Rather, these are grounds, which could be appreciated only in course of trial. Learned Counsel explains further that the petitioners are trying to mislead by distorting the facts. Even the Police Report, referred to by the petitioners, would indicate that out of the 32 Bighas of lands, only 25 bighas belong to the petitioners and the remaining seven bighas belongs to the Opposite Party No. 2 and it is this portion of the seven Bighas of the land that the petitioners had tried to grab forcibly and illegally. The Opposite Party No. 2 had acquired the lands from the erstwhile owner of the lands and till date, he has been paying rent to the Government and is in cultivating possession of the lands.

In support of his contentions, learned Counsel would refer to and rely upon the judgment of the Supreme Court in the case of Gangula Ashok and Anr. v. State of A.P. Reported in 2000 (2) BLJ 472.

7. From the grounds advanced by the petitioners, considering the reliance placed by them on the judgment of the Supreme Court in the case of Ch. Bhajan Lal (Supra), it appears that the petitioners have challenged the continuation of the proceedings on the ground that it is an abuse of the process of Court.

8. The question as to under what circumstances and what categories of cases, can a criminal proceeding be quashed either in exercise of extra ordinary powers of the High Court under Article 226 of the Constitution of India or in exercise of the inherent powers u/s 482 of the Code of Criminal Procedure, have been raised in several cases both before the Supreme Court as well as before the High Courts. After extensively deliberating on the issue, the Supreme Court in the case of Ch. Bhajan Lal (Supra), has enumerated as many as seven categories of circumstances under which the High Court in exercise of its inherent powers u/s 482 of the Cr.P.C. may quash the the entire criminal proceedings following the F.I.R. Out of the several categories, the one which is relevant in the context of the grounds advanced by the petitioners in the present case, is quoted in the following terms: - "Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

However, while referring to such a circumstance of a given situation, where false and vexatious charges of corruption and venality may be maliciously attributed against any person holding a high office and enjoying a respectable status, the apex Court has also cautioned that the power of quashing a criminal proceeding even in such a given situation should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. The Court will not be

justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint. The extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice. With reference to such a peculiar situation, the apex Court has further observed in the following manner:

In such a piquant situation, the question is what would be the remedy that would redress the grievance of the verily affected party? The answer would be that the person who dishonestly makes such false allegations is liable to be proceeded against under the relevant provisions of the Indian Penal Code - namely u/s 182 or 211 or 500 besides becoming liable to be sued for damages.

9. Referring to the present case, as it appears the allegations made in the complaint, do clearly constitute the offences justifying taking of cognizance of the offences by the Magistrate. The facts of the present case, in my opinion, do not fall in any one of the categories enumerated by the Supreme Court in Ch. Bhajan Lal's case (Supra) and therefore, does not call for the exercise of the inherent powers of this Court to quash the order of cognizance and the criminal proceedings pending against the petitioners.

10. The facts pleaded by the petitioners may suggest that a dispute in respect of the land under reference in the case is pending between the complainant and the accused persons since long. Both the petitioners as well as the complainant/ Opposite Party No. 2 have been claiming their right of title and possession over the lands. As per the Police Report submitted in the 144 Cr.P.C. proceedings, the possession over 25 Bighas of lands appears to have been declared in favour of the petitioners, whereas the claim of the Opposite Party No. 2 is in respect of another chunk of land measuring 7 Bighas over which the petitioners are alleged to have attempted to encroach. If such is the claim of right made by the complainant, there may be reason for him to protest against the alleged acts of encroachment committed by the petitioners and such protests may have the effect of causing annoyance, irritation, discomfort and discomfiture to the petitioners. These are apparently disputed questions of facts, which cannot possibly be looked into or appreciated at the time of taking cognizance of the offences by the Magistrate, when he is called upon to consider, on the basis of the statements of the complainant and the complainant's witnesses, to apply his mind and to satisfy himself as to whether the materials do make out any prima facie case for any offence. If the Magistrate is satisfied, then he has power to take cognizance of the offence and to direct the accused persons, prima facie found responsible for such offence to face trial. The obligation of the Magistrate at the stage of taking cognizance, therefore, extends only to consider the allegations in the complaint petition and the statement of the complainant and his witnesses and to find out as to whether a criminal offence is prima facie made out or not or whether there is any statutory bar.

11. Applying the above standards of jurisdictional requirements, the impugned order of cognizance, as passed by the learned court below in the context of the

allegations in the complaint and the statements of the complainant and his witnesses does not, in my opinion, suffer from any illegality or infirmity, which would attract invocation of the inherent jurisdiction of this Court for quashing the entire criminal proceeding following the order of cognizance.

12. There being no merit in this application, the same is accordingly, dismissed. The petitioners would be at liberty to agitate all such grounds as pleaded by them in their defence in course of trial before the trial court.