(2009) 06 PAT CK 0003

In the Patna High Court

Case No : Criminal Miscellaneous No. 34838 of 2007

Santosh Keshari @ Santosh Kumar Keshari and Another — APPELLANT

Vs

The State of Bihar and Another — RESPONDENT

Date of Decision : 30-06-2009

Acts Referred:
Penal Code, 1860 (IPC) — Section 34, 420

Citation : (2009) 3 PLJR 1024

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Ashok Kumar Keshri, for the Appellant; Jharkhandi Upadhyay for the State and None for O.P. No. 2, for the Respondent

Judgement

Abhijit Sinha, J.—This application by two of the five F.I.R. named accused of Buxar Town P.S. Case No. 285 of 2006 is for the quashing of the entire criminal proceedings arising therefrom. Although O.P. No. 2 was duly served with notice, he has chosen not to appear and contest this application.

2. The aforesaid case was registered under Sections 420/34 I.P.C. on the basis of a written report filed by one Shiv Prakash Roy, claiming himself to be the owner of an organization in the name and style of "Loktantra Raksha Vahini". According to the informant who has been impleaded herein as O.P. No. 2, the petitioner No. 1 and one Bhagwat Prasad Keshari, the proprietors of Bhagwati Trading Company, obtained a license bearing No. 426/2005-06 under the provisions of the Markets Act from Buxar Market Committee on 10.6.2005 and were clandestinely carrying out money transaction by trading in pulses, sugar, vegetable oil, dalda etc. through Account No. 01000021800 in the main branch of State Bank of India, Buxar in the name of Bhagwat Prasad Keshari and Bank Account No. 01000021703 in the name of Santosh Kumar Keshari in the same Bank. It has further been alleged that the aforesaid two persons with ulterior motive of evading the payment of taxes surrendered the licence issued under the Markets Act with an application for cancelling the same and continued to carry

out business by means of a photocopy of the license and thereby have evaded paying sales tax, income tax and market fees with the connivance of one Parshuram Ram, Marketing Supervisor, Buxar Market Committee and one Mukundjee Keshari, a named accused of Buxar Town P.S. Case No. 289 of 2005 on whose introduction the aforesaid two accounts in the State Bank of India were opened by giving wrong addresses.

3. The submission advanced by the learned counsel for the petitioners is that even presuming the allegations to be true, no offence is made out against the petitioners in absence of any of the ingredients making out the offences whereunder the case had been registered. It was further submitted that the informant in order to extract rangdari from the petitioners and other traders was in the habit of filing frivolous cases with the connivance of local police. That apart, it was submitted, that an F.I.R. at the behest of the informant with the charge that the petitioners were evading income tax, sales tax and market fee was not sustainable at all and the lodging of the F.I.R. was an abuse of the process of the court. It was further submitted that even presuming that the petitioners were evading paying taxes, the F.I.R. in that regard could only have been filed by the concerned departments and that too for violation/contravention of the respective Acts in question and in accordance with the procedure laid down in those Acts and Rules. In that view of the matter, it was submitted that the instant criminal proceeding is manifestly attended with mala fide and malicious intentions. The allegation of petitioners carrying out business after surrendering their license is also not correct since the petitioners, it is submitted, have merely filed an application for surrender of the license, the acceptance whereof has not been communicated to them.

4. Admittedly, the Government, both at the Centre and the State, have created different/various departments to look after matters in respect of income tax, sales tax and market fee and it is entirely their duty to keep a vigilant watch over evasion of taxes and in the event of detection of any such evasion it is for them to take appropriate action in that regard. It may not be out of place to mention here that these days it has become a fashion to create organizations in the garb of N.G.Os. with the prime intention of extorting money. From the records, it is apparent that neither the Sales Tax Department nor the Income Tax Department nor the Market Committee, Buxar, or even the bank authorities have initiated any action.

5. It is apparent from the F.I.R. that the proceeding has been initiated with some ulterior motive and with a view to cater services other than public services. From the averment in the petition, it is alleged that the registered N.G.Os. has created a reign of terror by lodging false cases with the connivance of local police. These allegations directed against the informant are serious in nature.

6. Notwithstanding valid service of notice O.P. No. 2 has not cared to appear and contest the application.

7. In the aforesaid facts and circumstances, I feel inclined to direct the Crime Investigation Department (C.I.D.) in the Government of Bihar to take over the case and investigate the allegations against the petitioners as also into the conduct of the informant and police and submit a report within one month from the date of the order. Due regard being had to the view which I have taken, the pronouncement of order is kept in abeyance awaiting the receipt of the report from the C.I.D.

