

(1998) 09 PAT CK 0072

In the Patna High Court

Case No : Criminal Miscellaneous No. 3860 of 1993

Satya Narayan Raut and Deo Narayan Raut

APPELLANT

Vs

The State of Bihar and Shri Ram Bilas Prasad

RESPONDENT

Date of Decision : 23-09-1998

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982 — Section 10(1)

Criminal Procedure Code, 1973 (CrPC) — Section 202, 204, 239, 340, 482

Penal Code, 1860 (IPC) — Section 193, 323, 379, 380, 411

Citation : (1998) 3 PLJR 619

Hon'ble Judges : Indu Prabha Singh, J

Bench : Single Bench

Advocate : Navin Sinha and Chandra Bhushan Verma, for the Appellant;
Yogendra Prasad Sinha No. 1, Mithilesh Verma and Bindeshwar Pd. Singh for O.P.
No. 2, for the Respondent

Final Decision : Dismissed

Judgement

L.P. Singh, J.—This is an application u/s 482 of the Code of Criminal Procedure. 1973 (in short the "Code"), it is directed against the entire prosecution of the Petitioners in Tr. No. 944 of 1992 pending in the court of Shri O.R Singh, Judicial Magistrate, 1st Class, Madhubani. The Petitioners have further prayed for quashing of the order dated 18.1.1993 passed by the learned Magistrate rejecting the prayer of the Petitioners for their discharge u/s 239 of the Code of Criminal Procedure.

2. The prosecution case, in short, is that on 16.5.1991 the F.I.R. was lodged by Opposite party No. 2, Ram Bilash Prasad, stating therein that he happens to be the tenant in the- house of the Petitioners. The Petitioners had asked him to vacate the house in question upon which he told them that on finding alternative accommodation he will vacate the same. Thereafter on 12.5.1991 the Petitioners with the help of others, forcibly took away the Generator set of opposite party No. 2 from the Verandah, to inside the house. On his protest opposite party No.

2 was assaulted by the Petitioners and his room was locked. At the intervention of residents known to the Petitioners OP No. 2 waited for few days to get the matter sorted out mutually. When this could not happen he lodged Mahhubani P.S. Case No. 185 of 1991 on 16.5.1991.

3. The case of the Petitioners appears to be that Petitioner No. 1 is an old man aged about 70 years and is a patient of bone T.B. Petitioner No. 2 is his only son and at the relevant time was employed as clerk-typist in the State Bank of India, local head office, Patna. Opposite party No. 2 was a tenant in one of the rooms of the Petitioners house at Madhubani for nearly 10 years where he carried on business of hiring of Generator set and also electrical fittings. Petitioner No. 2 was allotted election duty for 11th and 14th May, 1991. it is specific case of Petitioner No. 2 that he was hot at Madhubani on 12.5.1991 since because of election he was asked riot to leave the headquarters. Opposite party No. 2 fell in arrears of payment of rent which went on mounting. On repeated demands he was unable to clear of the same.; Due to the intervention of the neighbours there was amicable settlement between the parties to pay the arrears of rent in a short period and till then his electric generator would be kept by the Petitioners in custody. It was agreed that this generator will be kept with one Bishwanath Kapri. Opposite. Party No. 2 has filed this false case only to put pressure on the Petitioners.

4. In this case the police after completing the investigation submitted the charge sheet on the basis of which by his order dated 18.6.1992 the learned Chief Judicial Magistrate took cognizance against the Petitioners under Sections 447, 323, 379 and 411 of the Indian Penal Code. The Petitioners filed a petition u/s 239 of the Code before the learned Magistrate for their discharge on the ground that the dispute between the parties was purely of a civil nature and related to a dispute between the landlord and the tenant. Resort to criminal proceeding was an abuse of the process of the court. The learned Magistrate, however, by the impugned order dated 18.1.1993 rejected this petition of the Petitioners and held that there were sufficient materials on record to frame charges against them under Sections 448 and 380 of the Indian Penal Code. No case u/s 448 of the Indian Penal Code was made out inasmuch as the Verandah from which the generator is said to be removed was not in possession of opposite party No. 2. Since this generator was handed over to the Petitioners by opposite party No. 2, by way of surety, there was no question of any theft. On these grounds it has been contended that the impugned order as also the entire proceeding in Cr. Case No. 944/92 be quashed.

5. From this petition it appears that earlier also the Petitioners had approached this Court in Cr. Misc. No. 8837/92 u/s 482 of the Code. This petition was disposed of by this Court by order dated 29.7.1992 (An-nexure-3) according to which the Petitioners were given liberty to raise all those points pleaded in that Criminal Misc. case before the trial court at the time of framing of the charge. The application was, accordingly, disposed of with this observation.

6. I have heard the parties in detail. So far as the case of the Petitioners is concerned they have raised some questions of fact also which can not be gone, into at this stage in exercise of powers u/s 482 of the Code. It has been repeatedly held by the Hon''ble Supreme Court as will presently be seen that the questions of fact are beyond the scope of Section 482 of the Code and have to be decided by the trial court. However, since the Petitioners have taken the plea that there could not have been any theft with respect to the generator since the same was handed over to them by opposite party No. 2 and also since there could not be any offence committed u/s 448 of the Indian Penal Code inasmuch as the Verandah in question from which the generator is alleged to have been removed was not in possession of opposite party No. 2, at the appropriate place, I will briefly deal with these two pleas taken by the Petitioners.

7. The scope of Section 482 or Section 561A of the old Code had come up for consideration before the Hon''ble Supreme Court from time to time and has been clearly decided. I will briefly take up for consideration the scope of this section to find out whether this petition is fit to be allowed or not.

8. In this connection I will firstly refer to the case of R.P. Kapur Vs. The State of Punjab, . This was a case u/s 561A of the Old Code corresponding to Section 482 of the New Code. In this case it is clearly held that the inherent power of the High Court u/s 561A of Code could not be exercised in regard to matters specifically covered by the other provisions of the Code. It has also been held that ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. Some of the categories of cases have been stated in this decision in which the inherent power to quash proceedings can and should be exercised. One of them is that when the allegations made in the F.I.R. or complaint petition, even when, they are taken at their face value and accepted in their entirety, do not constitute the offence alleged the proceeding may be quashed. However, a note of warning has been sounded in this decision that when there is some evidence, the High Court will not embark on an enquiry whether it is sufficient or not since this is the function of the trial court.

9. Also in this connection a reference may be made to the case of Dr. Sharda Prasad Sinha Vs. State of Bihar, . In this case also the decisions in the case of R.P. Kapur (supra) has been taken into consideration and it has been held that when the allegations set out in the complaint or the charge sheet do not constitute any offence, the High Court u/s 482 of the Code can quash the order taking cognizance of the offence. From this also it would appear that it is only when the court finds on the basis of the charge sheet that no offence at all has been made out against the Petitioners the criminal proceeding against him may be quashed. In the present case it is not so.

10. In the case of Prathibha Rani v. Suraj Kumar and Anr. AIR 1985, it has been held as follows:

It is well settled by a long course of decisions of this Court that for the purpose of exercising its power u/s 482 Code of Criminal Procedure to quash a F.I.R. or a complaint the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se. It has no jurisdiction to examine the correctness or otherwise of the allegations.

In this case reliance was placed on the case of Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, . In this decision the matter of consideration before the Hon''ble Supreme Court was the scope of enquiry u/s 202 and also the scope of issue of process u/s 204 of the Code. Though this decision related to the scope of an enquiry and the issue of process under Sections 202 and 204 of the Code the principle of law has been very clearly summed up by the Hon''ble Supreme Court in the following words:

The magistrate was given an undoubted discretion in the matter and discretion has to be exercised by him. Once the Magistrate has exercised his discretion it is not for the High Court or even this Court to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint if proved would ultimately end in the convictions of the accused.

11. This matter also came up for consideration before the Supreme Court in the case of Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandojirao Angre and Others, . In this decision the Hon''ble Supreme Court while considering the true scope of Section 482 of the Code held that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. In this case the offence alleged was both of civil and criminal nature. It was held in it that if the dispute between the parties would predominantly be a civil wrong or may not amount to a criminal offence then under such situation the proceeding could be quashed specially when in the said case relationship between the parties was of mother and son. In the present case, however, the dispute between the parties is not exclusively of a civil nature. The allegations made against the Petitioners are that they forcibly took away the generator from the possession of opposite party No. 2 and when he protested he was beaten up and his room was locked. His room in which his personal belongings were kept was locked. Hence obviously the allegations made in the F.I.R. constituted an offence of criminal nature and this can not be said to be only a dispute between the landlord and the tenant over the non-payment of the arrears of rent. Moreover the relationship between the parties is also not of mother and son or any other intimate relationship.

12. In this a reference may also be made to the case of State of Bihar Vs. Murad

Ali Khan and Others, . The true scope of Section 482 of the Code came up for consideration before the Hon''ble Supreme Court in this case. It has been observed as follows:

It is trite that jurisdiction u/s 482 Code of Criminal Procedure 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 functions of the trial Magistrate when the evidence comes before him. Though It is neither possible nor advisable to lay down any inflexible rules to regulate that jurisdiction one thing however, appears clear; and it is that, when the High Court is called upon to exercise this jurisdiction to quash a proceeding at the stage of the Magistrate taking cognizance of an offence the High Court is guided by the allegations, whether those allegations, set out in the complaint or the charge sheet, do not in law constitute or spell out any offence and that resort to criminal proceeding would, in the circumstances, amount to an abuse of the process of the court or not.

13. In the case of Dhanalakshmi Vs. R. Prasanna Kumar and Others, , it has been held by the Hon''ble Supreme Court that Section 482 of the Code empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court. However, it has been observed that in a complaint case if no offence is disclosed or the allegations made therein are frivolous, vexatious or oppressive the inherent power of the High Court can be exercised to quash the proceeding Further it has been observed that complaint petitions has to be read as whole. If it appears on a consideration of the allegation in the light of the statement on oath of the complainant that the ingredients of offence are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious in that event, there should be no justification for interference by the High Court. Though the above mentioned case is related to a case instituted on the complaint petition the principle of law has very clearly be laid down in it.

14. A reference in this connection may also be made to the case of State of West Bengal and Others Vs. Swapan Kumar Guha and Others, in which it has clearly been held that to find out whether any offence has been disclosed or not the Court has mainly to take into consideration the F.I.R. or the complaint petition. From this it would also become clear at this stage the defence taken by the accused is not to be taken into consideration because its determination is the function of the trial court.

15. In the case of State of Bihar v. Shri P.P. Sharma and Anr. 1991 (2) RLJ.R. 11 (SC) it has been clearly held that where F.I.R. and other materials disclosed in the police reports show that prima facie offence is made out against the accused and the allegation if taken as correct disclose the commission of a cognizable offence the High Court would fall into grave error and would be acting with

patent illegality in quashing the criminal proceeding. It was further held by the Hon"ble Supreme Court in this case that the appreciation of evidence is the function of the criminal courts. The High Court can not assume jurisdiction and put an end to the process of investigation and trial provided under the law. Most of these decisions were taken into consideration in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, . In this case it has been held that when the allegations made in the F.I.R. normally constitute cognizable offence quashing of the F.I.R. is not justified. However, in paragraph 108. of this decision seven categories of cases have been given in which the F.I.R. can be quashed. Those cases have been mentioned in paragraph 108 of this decision. The present case does not fall in any of the categories. In this very decision it has been held that when the allegations made in the F.I.R. normally constitute a cognizable offence it can not be quashed on the basis of the denial of the statement of the party against whom the commission of offence is alleged. From this it would appear that a series of decisions by the Hon"ble Supreme Court clearly provide that at this stage this Court will not enter in the questions of fact and the defence taken by the accused will have to be determined by the trial court. At this stage the criminal proceeding can only be quashed if it is found that the allegation made in the F.I.R. even when they are taken at their face value and accepted in their entirety do not constitute the offence alleged. The law on this point has been clearly laid down by a series of decisions as noted above and if there is some evidence supporting the allegations made in the F.I.R. the High Court will not embark upon the enquiry whether it is sufficient or not to end in the conviction of the accused since that is the function of the trial court.

16. In the aforesaid background can the prayer of the Petitioners be allowed or can the criminal proceeding instituted against them as also the impugned be quashed? The answer to this question would obviously be in negative in view of the decisions noted above. However, the learned Counsel for the Petitioners has also placed reliance on the case of State of Haryana v. Choudhary Bhajan Lal (supra) and has referred to its paragraph 108. As stated above the case of the Petitioner is not covered by any of the categories mentioned in this paragraph. However, the learned Counsel has placed reliance on category No. 7 as given in paragraph. 108 of this decision which runs as follows:

7. 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.

17. The present case will not fall under this category for the obvious reason that even according to the Petitioners the relationship between the parties was very cordial and as a matter of fact it was opposite party No. 2 who used to look after the comforts and the well being of Petitioner No. 1 aged about 70 years who was living there alone. As a matter of fact from this misc. petitions itself it would appear that the relationship between the parties was cordial and it was only

when the Petitioners had fallen in arrears of rent that the dispute arose. Moreover the possession of generator with one Mr. Kapri at the instance of the Petitioners is also not denied. Under these circumstances it can not be said that the proceeding was maliciously instituted with an ulterior motive for wreaking vengeance. Hence this decision is not of any help to the Petitioners.

18. Learned Counsel for the Petitioners has also placed reliance on the case of Phiroze Dinshaw Lam and Others Vs. Union of India (UOI) and Others, . This was a case u/s 340 of the Code for lodging a complaint u/s 193 of the Indian Penal Code. In this case a petition was filed after 15 months of the disposal of the writ petition for prosecution u/s 193 of the Indian Penal Code. It was held that the imposition of penal interest would meet the ends of justice instead of making any direction for prosecution of the complainant. Reliance has been placed on paragraph Nos. 11, 15 and 16 of this decision. I have gone through those paragraphs but they do not help the case of the Petitioners. As a matter of fact at this stage the law does not permit taking of defence of the accused into consideration. Also a reliance has been placed on behalf of the Petitioners on the case of Shiveshwar Prasad Narain Singh v. Braj Kishore Singh 1978 B.L.J.R. 668. On the strength of this decision an attempt has been made that tenant must approach the authority under Bihar Buildings (Lease, Rent and Eviction) Control Act for the redressal of his grievances instead of moving the criminal court. From the facts of the said case, however, it appears that this related to withholding of an amenity to the tenant which is prohibited by Sections 10(1) of that Act. This decision is hardly of any help to the learned Counsel for the Petitioners.

19. On behalf of the Petitioners it has been submitted that the generator has already been restored to opposite party No. 2 and, therefore, the allegations that the same was snatched away by the Petitioners would be of no consequence. The thrust of this argument appears to be that once a thief or an offender returned back the stolen articles or meets the allegation of the Petitioner no offence under law could be made out. This is a complete negation on the principle of law as it exists today. The moment the generator was snatched away or removed the offence was complete. It will hardly matter if the same generator is returned back to the Petitioners. So far as the decisions in the case of Nagwa Devi Vs. The State of Bihar, is concerned it does not apply to the facts of the present case.

20. Lastly the Petitioners have placed reliance on the case of Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, . In this case quashing of a complaint u/s 482 by the High Court was under consideration when it related to an alleged offence committed under the provisions of Food Adulteration Act. On the record there was no material to show that the Appellant-accused was manufacturer or was holding licence for manufacturing (the beverage). It was found that the complaint petition; as also the preliminary evidence made but no case against the accused. Under the circumstances it was held that the complaint petition was liable to be quashed. The facts of the present case, however, are entirely different. Here there are specific allegations made against the Petitioners

of having committed the offence as alleged. It is not of those cases in which if the allegations made against the Petitioners; even if they are accepted in their entirety; do not make out any offence. Hence this decision is of no help to the Petitioners.

21. From the detailed discussions made above it becomes perfectly clear to me that there is no merit in this application. It is, accordingly, dismissed and the impugned order is confirmed. The criminal proceeding against the Petitioners shall continue.