
(2004) 05 JH CK 0003
In the Jharkhand High Court
Case No : Criminal M.P. No. 297 of 2003

Satyendra Kumar Mishra

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision : 12-05-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120B, 147, 149, 327, 380

Citation : (2004) 2 JCR 592

Hon'ble Judges : Hari Shankar Prasad, J

Bench : Single Bench

Advocate : S. Srivastava, for the Appellant; M.K. Dey, for the opp. party No. 2 and APP, for the Respondent

Final Decision : Allowed

Judgement

Hari Shankar Prasad, J.—This application u/s 482 of the Code of Criminal Procedure had been filed for quashing the order dated 8.1.2003, passed in C/1 Case No. 49 of 2002 whereby the learned Chief Judicial Magistrate, Chaibasa had taken cognizance under Sections 147/149/380/120B and 427 of the Indian Penal Code and subsequent orders passed in the aforesaid case whereby summons have been ordered to be issued against the petitioner.

2. Facts giving rise to the filing of this application are that O.P. No. 2 filed a complaint case being C/I No. 49 of 2002 stating therein that he was in possession over plot No. 1872 recorded under khata No. 293 on which the shop rooms and residential houses of the complainant were situated and premises were recorded in the name of Janmayjay Singh, father of the complainant-O.P. No. 2, in the revisional survey khatian and houses were also constructed by his father who remained in possession till his death and after his death, the complainant came in possession over the land in question. But the possession of the land was disputed by the President and Members of Shree Mahavir Mandir Samiti and as such, proceeding u/s 144 Cr PC was initiated before the Sub-

Divisional Magistrate, Chaibasa and the same was subsequently converted into proceeding u/s 145 Cr PC and the said proceeding was decided on 13.6.2002, against O.P. No. 2--Complainant and it was declared that the land was in possession of Shree Mahavir Mandir Samiti. Further case of the complainant-O.P. No. 2 is that he filed a Cr. Revision before the Sessions Judge, Chaibasa but during the pendency of the case, the petitioner along with others ousted the complainant from the house and premises on 13.9.2002, and also demolished the house of the complainant-O.P. No. 2. Although, complainant-O.P. No. 2 had shown a certificate of his lawyer that a Cr. Revision has already been filed and the case was fixed for hearing on admission on 16.9.2002, but the petitioner did not listen and with the assistance of police force dispossessed the petitioner and demolished the house and premises standing over the land in question (annexure-1). Thereafter O.P. No. 2-complainant filed a complaint case which was registered as C/1 case No. 49 of 2002 and the learned Chief Judicial Magistrate, Chaibasa after examining complainant on S.A. and after holding inquiry u/s 202, Cr PC was pleased to take cognizance vide order dated 8.1.2003.

3. The points that have been taken in this quashing application are that petitioner is a responsible Government Servant and he, in the capacity of the Circle Officer, implemented the order of the Court to prevent any breach of peace and tranquility in the land in question which belongs to the religious institution as has been so declared by the learned Magistrate while deciding the possession in the proceeding u/s 145, Cr PC. Another point that has been urged on behalf of the petitioner is that the petitioner is a responsible Government Servant and, therefore, cognizance without sanction for prosecution is bad and illegal because even if some offence has been committed by the petitioner, that has been committed in the official capacity in discharge of his official duty and, therefore, without sanction for prosecution from a competent authority, no cognizance should be taken.

4. On the other hand, learned counsel for the O.P. No. 2 has submitted that it was no business of the petitioner to have actively taken part in demolition of the structure.

5. From perusal of the order passed in the proceeding u/s 147, Cr PC is clear that possession of the mandir has been declared over the land in dispute. It also appears from the complaint petition that house was locked by Block Development Officer and it also appears that complainant had filed a criminal revision against the order of Magistrate passed in proceeding u/s 145, Cr PC but in the Cr. Revision, there was no stay order and, thereafter, petitioner was precluded from preceding in the matter and, therefore, in the facts and circumstances, no case is made out under Sections 147/149/448/ 120B and 427, IPC. This application is accordingly allowed and the order 8.1.2003, passed in C/1 Case No. 49 of 2002 is hereby quashed.