

(2009) 02 PAT CK 0087
In the Patna High Court
Case No : Cr. Misc. No. 50386 of 2007

Sheo Pujan Yadav

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-02-2009

Acts Referred:

Citation : (2010) 6 RCR(Criminal) 2781

Final Decision : Allowed

Judgement

Abhijit Sinha, J.—The petitioner who is the complainant of Complaint Case No. 781 of 2005 has preferred this application with a prayer for quashing of order dated 24.2.2006 passed therein by Sri R. Malviya, learned Magistrate 1st Class, Katihar, whereby he dismissed the complaint petition u/s 203 Cr.P.C. as also for quashing of order dated 20.8.2007 passed by the learned Presiding Judge, F.T.C. No. V, Katihar, in Cr. Revision No. 33 of 2006, whereby he dismissed the revision preferred against order dated 24.2.2006.

2. It appears that the petitioner had filed the aforesaid complaint against the O.P. Nos. 2 to 5 herein inter alia stating that there is a land dispute between Vivekanand Yadav, Dilip Yadav and accused Pramjeet Kaur and ors. for which Title Suit No. 41 of 2001 had been lodged by Dilip Yadav, the son of the complainant. It is said that in view of the filing of the litigation the accused persons along with 3 unknown others having hatched a conspiracy formed an unlawful assembly armed with pistol, lathi danda and coming to the house of the complainant and on the orders of accused Jaspal Singh the three unknown persons caught hold of the complainant and assaulted him with slaps and fists and Jaspal himself threatened to kill him if any protest was made.

3. It is further alleged that accused Jaspal, Satish and Bittu were armed with pistol and on the orders of Jaspal all the accused persons entered into the house of the complainant and removed several house hold articles whereas accused Paramjeet Kaur stole one attache containing golden chain, silver payal golden earring, 5 sarees valued at Rs. 1 lac and accused Bittu and Satish removed one

steel box containing clothes and ornaments worth Rs. 12,000/- and Jaspal removed one new cycle worth Rs. 1700/-. It is said that on alarm being raised villagers arrived and saw the occurrence and on their protest they were threatened with dire consequences. It has been alleged that 4-5 hours prior to the occurrence the male members of his family Vivekanand Yadav and others were arrested and taken away by the police on the basis of a false case at the instigation of the accused persons.

4. Having held an inquiry, where 4 witnesses were examined on behalf of the complainant, the learned Magistrate permitted the opposite party to file several documents and thereafter the complaint petition was dismissed u/s 203 Cr.P.C. Aggrieved thereby the complainant filed Criminal Revision No. 33 of 2006 which too was dismissed.

5. It has been submitted on behalf of the petitioner that it is by now well settled that since an object of an inquiry u/s 202 Cr.P.C. is to ascertain whether the allegations made in the complaint are intrinsically true the Magistrate acting u/s 203 Cr.P.C. has to satisfy himself that there is sufficient ground for proceeding. In order to come to this conclusion he is entitled to consider the evidence taken by him or recorded in an inquiry u/s 202 Cr.P.C. but he is not entitled to rely upon any other material besides this.

6. It was also sought to be submitted that the learned Magistrate had erred in law in permitting the opposite party herein to file certified copy of documents appertaining to various litigations inter se the parties prior to taking of cognizance as the accused persons had no locus standi until such time that cognizance was taken. The grievance of the learned Counsel for the petitioner was that the learned Magistrate while dismissing the complaint petition had placed reliance on the documents filed by the accused persons and the revisional court too had followed suit which apparently was against the law and unwarranted.

7. Relying on *Vadilal Panchal Vs. Dattatraya Dulaji Ghadigaonker and Another*, the Apex Court in the case of *Pramatha Nath Taluqdar Vs. Saroj Ranjan Sarkar*, observed that the scope of inquiry u/s 202 Cr.P.C. is limited to finding out whether process should issue or not and Section 203 Cr.P.C. lays down what materials are to be considered for the purpose. As held in *Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others*, the scope of the inquiry u/s 202 Cr.P.C. is extremely limited - limited only to ascertainment of the truth or falsehood of the allegations made in the complaint i.e. on the materials placed by the complainant before the court, for the limited purposes of finding out whether a prima facie case for issue of process has been made out; for deciding the question purely from the point of view of the complainant without at all advertting to any defence that the accused may have.

8. Way back in the case of *Chandra Deo Singh Vs. Prokash Chandra Bose and Another*, it was observed by the Apex Court that the entire scheme of Chapter

XVI Cr.P.C. shows that an accused person does not come into the picture at all till process is issued. This according to their Lordships does not mean that he is precluded from being present when an inquiry is held by a Magistrate. He may remain present either in person or through a Counsel or agent with a view to be informed of what is going on. But since the very question for consideration being whether he should be called upon to face an accusation, he has no right to take part in the proceedings nor the Magistrate has any jurisdiction to permit him to do so. Permitting an accused person to intervene during the inquiry would frustrate its very object and that is why the legislature has made no specific provision permitting any accused persons to take part in an inquiry.

9. As stated above, both the Magistrate as also the revisional court had placed reliance on the documents filed by the accused at the inquiry and had based their findings thereupon which was neither permissible nor warranted and is an abuse of the process of the Court.

What the learned revisional court forgot to notice was the fact that although the occurrence may have occurred due to dispute over the lands some overt acts were committed by the accused persons and this by itself was the matter which was the subject matter of inquiry. Neither the magisterial court nor the revisional court could have placed reliance on the litigation existing inter se between the parties from before. Any reliance or consideration on such earlier litigations between the parties de hors the criminal overt acts at the time of occurrence could not be sustained in the eye of law.

Accordingly the instant application has to be allowed and the impugned order of the learned Magistrate and the revisional court have to be set aside as being unwarranted in law and I do so.