
(2020) 02 PAT CK 0145

In the Patna High Court

Case No : Criminal Writ Jurisdiction Case No. 1798 Of 2019

Shiv Shankar Prasad Choudhary

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 03-02-2020

Acts Referred:

Bihar And Orissa Municipal Act, 1922 — Section 211, 212
Code Of Criminal Procedure, 1973 — Section 82, 83, 87

Citation : (2020) 02 PAT CK 0145

Hon'ble Judges : Rajeev Ranjan Prasad, J

Bench : Single Bench

Advocate : Banwari Sharma, Shivendra Kumar Sina, Rajeev Kumar Sinha

Final Decision : Allowed

Judgement

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel representing Municipal Corporation, Munger (respondent no. 2).

Since a question of law has arisen for consideration in the present case, the matter has been heard and is being disposed of with the consent of the parties at this stage itself.

The present application has been preferred for quashing of the order taking cognizance and subsequent proceeding of Complaint Case No.2C/6 of 2006 Trial No. 182 of 2001 which was lodged for the offences registered under Sections 211 and 212 of the Bihar and Orissa Municipal Act, 1922 (hereinafter referred to as the 'Act of 1922').

Learned counsel for the petitioner submits that Sections 211 and 212 of the Act of 1922 talk of penalty for not removing offensive matter from or near road and penalty for allowing sewage, offensive matter or rubbish to be thrown or run into road or drain. Under these two provisions the maximum fine to be imposed is Rs. 50/- and Rs. 25/- respectively. It is submitted that by no stretch of imagination the violation of Sections 211 and 212 of the Act of 1922 could have given rise to

a complaint petition before a regular court constituted under the Code of Criminal Procedure (in short 'Cr.P.C.')

Learned counsel for the petitioner submits that immediately after realizing the mistake in filing the complaint before the court of learned Judicial Magistrate, the then Special Officer, Munger Municipal Corporation filed an application as back as on 20.04.2001 (Annexure '2') and requested the learned Magistrate to allow him to withdraw the Complaint Case No. 2C/6 of 2000. This request of the Special officer was, however, denied by the learned Magistrate. The Special officer carried a revision being Criminal Revision No. 372 of 2001 in the court of learned Additional Sessions Judge VII, Munger which was also disposed of on the 3rd Day of October, 2002 and the learned Additional Sessions Judge VII, Munger dismissed the revision application saying that the complainant had to satisfy the court that there was reasonable ground to withdraw this case and since the only ground was that there was no signature of the complainant, the complaint cannot be allowed to be withdrawn.

It is further submitted that after passing of this order the case remained pending before learned Magistrate and in addition to summoning, the learned Magistrate went on issuing warrant of arrest and even without giving any reason the learned Magistrate issued process under Sections 82 and 83 Cr.P.C. simultaneously and thereafter petitioner was declared absconder.

In this connection, it has been pointed out that before issuing the process under Section 82 Cr.P.C., the learned Magistrate did not satisfy itself with the reasons for passing of such order. In his submission Section 82 Cr.P.C. clearly talks of "reasons to believe" as a condition precedent for issuing process under Section 82 Cr.P.C. and it has been held by several judicial pronouncement that such "reason to believe" is in the nature of subjective satisfaction on the part of the learned Magistrate. It is, thus, submitted that on the one hand the provisions of Sections 211 and 212 of the Act of 1922 are not an offence triable before the Magistrate and at the same time the Magistrate has refused to allow the complainant to withdraw the case and cajoled upon his shoulder to prosecute the petitioner which is nothing but an abuse of the process of the court.

Learned counsel for the Munger Municipal Corporation and learned counsel for the State have accepted the legal position to the extent that Sections 211 and 212 of the Act of 1922 are not an offence triable by the Magistrate and those provisions talk about imposition of penalty in case of the violation of those provisions.

Learned counsel for the Municipal Corporation, Munger has though at one stage submitted that the petitioner should have appeared in the court below and there is no reason why the petitioner did not appear for all these years, very soon he agreed that apart from that it is evident from the records that no offence at all is made out against the petitioner under the provisions of the Act of 1922 and that so far as Municipal Corporation is concerned, it has taken a stand in the year

2001 itself that the complaint has been filed erroneously.

Submission of learned counsel for the Corporation has been endorsed by learned counsel for the State.

Having heard learned counsel for the parties and on careful perusal of the records as also the provisions aforementioned, this Court finds that Sections 211 and 212 of the Act of 1922 read as under:

"211. Penalty for not removing offensive matter or near road.- Any person who being the occupier of a house in or near a public road within a municipality, keeps or allows to be kept for more than twenty-four hours or for more than such shorter time as may be determined by a bye-law, otherwise than in some proper receptacle, any dirt, dung, bones, ashes, night soil or filth or any noxious or offensive matter in or upon such house, or in any out-house yard or ground attached to and occupied with such house, or such receptacle to be in a filthy or noxious state, or neglects to employ proper means to cleanse the same, shall be liable to a fine not exceeding fifty rupees.

212. Penalty for allowing sewage, offensive matter or rubbish to be thrown or run into road or drain.- Any person who within a municipality-

(1) without the permission of the Commissioners, throws or puts or permits his servants to throw or put any sewage or offensive matter upon any road, or who throws or puts or permits his servant to throw or put any earth, rubbish, sewage or offensive matter into any sewer or drain belonging to the commissioners, or into any drain commencing therewith; or

(2) causes or allows the water of any sink, sewer or cesspool, or any other offensive matter belonging to him or being on his land to run, drain or be thrown or put upon any road, or causes or allows any offensive matter to run, drain or be thrown into a surface drain near any road in such manner as to cause a nuisance, shall be liable to a fine not exceeding twenty-five rupees."

A bare perusal of the aforesaid provisions show that those are talking of imposition of penalty and have not been made offence triable by Magistrate even under the statute. Apart from this, perusal of the ordersheets clearly demonstrate that the learned Magistrate went on issuing warrant in addition to issue summons without following the procedure laid down under Section 87 Cr.P.C. which require recording of reasons. The learned Magistrate proceeded to issue process under Sections 82 and 83 Cr.P.C. simultaneously without even looking into the mandatory requirement of Section 82 Cr.P.C. which talks of passing of such order only upon there being "reasons to believe" the accused has either absconded and or concealed himself with an intention not to allow execution of warrant. There was no such report of the investigating officer and nothing of that sort has been mentioned in the order passed by the learned Magistrate.

This being the position in the accepted fact and position of law as discussed

hereinabove, this Court comes to a conclusion that the order taking cognizance and continuation of the proceeding against the petitioner in Complaint Case No. 2C/6 of 200 Trial No. 182 of 2001 in the court below if allowed would be nothing but an abuse of the process of the court.

This writ application is, thus, allowed. The entire criminal proceeding of Complaint Case No. 2C/6 of 200 Trial No. 182 of 2001 against the petitioner before the court of Shri Bibhuti Bhushan, Judicial Magistrate Ist Class, Munger is quashed.