

(2007) 11 PAT CK 0043

In the Patna High Court

Case No : Criminal Miscellaneous No. 27920 of 2007

Shrimati Krishna Mani Kumari

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 01-11-2007

Acts Referred:

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

Penal Code, 1860 (IPC) — Section 147, 149, 323, 379

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(x)

Citation : (2009) 3 PLJR 859

Hon'ble Judges : Sadanand Mukherjee, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sadanand Mukherjee, J.—Heard learned counsel for the petitioner, learned counsel for the complainant and learned Addl. P.P. This is an application for quashing the order dated 14.9.2006 passed by the Judicial Magistrate, Nawada whereby and whereunder he has taken cognizance against in Complaint Case No. 283 of 2005 for the offence under Sections 147, 149, 323, 379 of the I.P.C. and also u/s 3(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, and issued summonses against the petitioner to face trial.

2. Allegation in the complaint was that on the date of occurrence all the accused persons including the petitioner armed with weapons and "lathi were cutting the soil from the raiyati land of the complainant and when the complainant protested to this illegal act, on the order of the petitioner, accused Nos. 2 to 4 of the complaint made firing from countrymade pistol which could not hit the complainant and the rest accused persons assaulted the complainant with "lathi. It has further been stated that the accused persons were using words which were against the Harijans.

3. It has been submitted that after examining the complainant, the learned Court

below took cognizance of offence under Sections 147, 149, 323, 379 of the I.P.C. and also u/s 3(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and further summoned the petitioner to face trial upon the complaint filed by Opposite Party No. 2, i.e., the complainant. It has also been submitted that besides the complainant, two of the complaint's witnesses, namely, Baleshwar Paswan and Mithilesh Paswan were examined in course of enquiry u/s 202 CrPC in the present complaint case by the learned Magistrate and both the aforesaid witnesses have not stated even a word against the petitioner and as such the allegation against the petitioner as alleged in the complaint was falsified. It is submitted that the allegation against the petitioner as alleged in the complaint stands falsified.

4. On behalf of the petitioner it is stated that there was absolutely no evidence against the petitioner but the learned Court below in a very mechanical manner took cognizance under different sections of the I.P.C. as also under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act against the petitioner and others. Apart from the aforesaid two witnesses, no witness was examined and the learned court below should have considered the relevant facts that the witnesses, had not deposed against the petitioner and no offence under different sections of the I.P.C. is made out.

5. On the other hand, on behalf of Opposite Party No. 2 it has been submitted that in the complaint petition there is mention that this petitioner had given orders to all the accused persons to commit murder of the complainant by making firing and on the order of this petitioner, accused persons made firing from country-made gun on the complainant and all the accused persons were using abusive language against the Harijans.

6. From perusal of the statement of the enquiring witnesses, namely, Baleshwar Paswan and Mithilesh Paswan, it appears that these witnesses had not stated the presence of this petitioner during the course of occurrence. They had alleged against Rajendra Yadav, Upendra Yadav, Surendra Yadav, Anil Yadav, Balmiki Yadav, Mahendra, Binod, Ramrup, Uday and Baleshwar Yadav, stating that the aforesaid accused persons assaulted the complainant when the complainant protested against cutting the soil from the raiyati land of the complainant. It was Upendra Yadav who fired shot as alleged and other accused persons assaulted by "lathi" and "paina". They have not stated that this petitioner was present and she gave any order.

7. The ambit of enquiry u/s 202 Cr.P.C. has been settled by the Hon''ble Supreme Court in the case of Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, wherein and whereunder the Hon''ble Supreme Court has held as follows:--

"It would thus be clear from the two decisions of this Court that the scope of the inquiry u/s 202 of the Code of Criminal Procedure is extremely limited--limited only to the ascertainment of the truth or falsehood of the allegations made in the

complaint--(i) on the materials placed by the complainant before the Court; (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have. In fact it is well settled that in proceedings u/s 202 the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not."

8. The Magistrate has been given discretion in the matter and as such discretion has to be exercised judicially. In the aforesaid case of Hon"ble Court the categories of cases have been mentioned wherein and whereunder issuance of process against the accused can be quashed or set aside. One such category is relevant as follows:--

"where the allegations made in the complaint or the statement of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused."

(Emphasis supplied)

9. In the instant case the witnesses have been examined in course of enquiry u/s 202 Cr.P.C. and truth and falsehood of the allegation in the complaint have to be ascertained in course of enquiry. As stated above, the statement of the witnesses recorded in support of the complainant at their face value make out absolutely no case against the petitioner. The enquiring witnesses had not named this petitioner having any role for the offence as alleged and under such circumstances this case falls within the categories of those cases in which the order of the learned Magistrate issuing process u/s 204 of the Cr.P.C. is liable to be interfered with as no offence is made out in course of enquiry in the versions of supporting witnesses u/s 202 Cr.P.C. so far as the petitioner is concerned.

10. Under such circumstances the order dated 14.9.2006 passed by the learned Judicial Magistrate, Nawadah with regard to the issuance of process against the petitioner is quashed and set aside so far as the petitioner is concerned. This application is accordingly allowed.