
(1999) 11 PAT CK 0100

In the Patna High Court

Case No : Criminal Miscellaneous No. 9103 of 1994

Sister Eulalia Furtado @ Eulalia

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 17-11-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 482
Penal Code, 1860 (IPC) — Section 307, 323, 341, 448, 503

Citation : (2000) 1 BLJR 362 : (2000) 2 PLJR 54

Hon'ble Judges : Sudhir Kumar Katriar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sudhir Kumar Katriar, J.—This petition u/s 482 of the Code of Criminal Procedure, 1973, at the instance of the sole petitioner is directed against the order dated 22-5-93, passed by Shri Ved Prakash, Judicial Magistrate, 1st Class, Patna, in Complaint Case No. 911(C) of 1992/ T.R. No, 630 of 1993, whereby cognizance of the alleged offence has been taken under Sections 323 and 503 of the Indian Penal Code, and the petitioner herein has been summoned to stand her trial,

2. According to the allegations in the petition of complaint dated 17-12-92, Lal Mohan Mistry, the complainant and opposite party No. 2 herein, is a permanent class IV employee of the Patna Women's College, Patna, and at the relevant point of time was under the orders of the Vice-Chancellor of the Patna University on deputation to the Central Library of the University. In spite of his deputation to the University Library, he was for undisclosed administrative reasons drawing his salary from the office of the Patna Women's College. The accused, the petitioner herein, was in charge of disbursement of his salary. According to the further allegations, the petitioner has been deliberately harassing opposite party No. 2 regarding payment of his salary, and the latter had already lodged complaints with the University authorities as well as his employees' union in that behalf. On 5-12-92, at about 12 noon, opposite party No. 2 along with the

functionaries of his employees" Union had gone over to the college to draw his salary. He went to the petitioner sitting in her office room and requested for the salary cheque, who got enraged and replied that he had been complaining to the University authorities against her and threw a choppal on him and also delivered a chapped blow on him. The persons present there intervened.

2.1. According to the further allegations, opposite party No. 2 herein had lodged First Information Report about the present occurrence on 5-12-92 itself with Kotwali Police Station. He was himself arrested during the course of the day and was released on bail on 14-12-92. He had gone over to the police station on 15-12-92 to enquire about the progress in the F.I.R. lodged by him to be informed that the dealing clerk was not available and he should enquire the following day. He learnt on inquiry from the Kotwali Police Station on 16-12-92 that his F.I.R. had not been registered. Hence the instant petition of complaint on 17-12-92. On these allegations, complaint case No. 911 (C) of 1992 was registered in the Court of learned Chief Judicial Magistrate, Patna, a copy of which is marked Annexure-1 to this quashing petition.

3. The learned Chief Judicial Magistrate ordered for an inquiry u/s 202 of the Code and transferred the same to the Court of the learned Judicial Magistrate for further action in accordance with law. The learned Judicial Magistrate conducted the requisite enquiry u/s 202 of the Code, and ultimately passed the impugned order.

4. It is relevant to State that the petitioner herein had sent a written report on 5-12-92 to the Officer-in-Charge, Kotwali Police station, Patna, about the aforesaid occurrence, of course giving a different version of the same. According to the allegations in the said written report, opposite party No. 2 herein (the accused therein) had entered the office chamber of the petitioner (the informant therein) on 5-12-92, and demanded issuance of his salary cheque. The petitioner was at pains to explain to him that his salary had not been received from the University, upon which opposite party No. 2 started hitting the table in the presence of other persons named in the written report. He then lifted a chair saying that "only when your head is broken by this chair you will do the work". He left the room after giving the threat that if the cheque is not issued immediately she will have to bear the consequences, leaving her aghast and terrified. According to the further allegations in the written report, opposite party No. 2 herein is in the habit of visiting the petitioner's office and disturbing the peaceful functioning of the office. He had gone over to the office on 4-12-92 also and used abusive language both in the office and in the college library. According to the further allegations, the petitioner and others in the college are living in fear and since most of the functionaries there are ladies, they feel all the more terrified. On these allegations, Kotwali P.S. Case No. 554/92 was registered under Sections 307, 341 and 448 of the I.P.C., a copy of which is marked Annexure-2 to the present quashing petition. As stated above, opposite party No. 2 herein was arrested in this police case on 5-2-92 itself and was released on bail

on 14-12-92. The police conducted investigation into the allegations and submitted charge-sheet under Sections 307, 341 and 448 of the I.P.C. Opposite party No. 2 was committed to the Court of Session. The petitioner unsuccessfully challenged the Order before the trial Court, but got relief before the Sessions Court. The learned Sessions Judge was pleased drop the charge u/s 307 of the I.P.O., and remitted the matter back to the learned Magistrate for trial in accordance with law. The same has been registered as T.R. No. 123/98 State v. Lal Mohan Mistry, and is still pending trial.

5. While assailing the validity of the impugned order of cognizance, learned Counsel for the petitioner submitted that even taking the entire allegations in the petition of complaint to be correct/the present case is covered by the provisions of Section 95, I.P.C. The same is set out hereinbelow for the facility of quick reference:

95. Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

Learned Counsel for the petitioner has relied in the judgment of the Supreme Court reported in *Veeda Menezes Vs. Yusuf Khan and Another*, .

5.1. Learned Counsel for O.P. No. 2 has in reply submitted that the benefit of Section 95 of the I.P.C. is not available to the petitioner in the facts and circumstances of the present case because, according to the allegations in the petition of complaint, the petitioner had really delivered a chappal blow on the person of O.P. No. 2 and that too in the presence of a number of persons in the office,

5.2. In view of the conclusion arrived at hereinbelow, there is no need to decide this question. The application succeeds otherwise also. However, the aforesaid judgment of the Supreme Court in *Veeda Menezes's* case (*supra*) was after all decided after the entire evidence had come on record and the trial had concluded.

6. Learned Counsel for the petitioner next submitted that in view of the allegations, no case u/s 504 of the I.P.C. is made out. In her submission, there was no intentional insult of intent to provoke breach of the peace. Learned Counsel for O.P. No. 2 has countered the submission.

6.1. Having considered the rival submissions, I am of the view that this contention must succeed. Section 504, I.P.C. is set out hereinbelow for the facility of quick reference ;

504. However, intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Counsel for the petitioner is right in her submission that in view of the allegations levelled in the petition of complaint, there was no intention to provoke breach of the peace. It was basically and fundamentally a quarrel between the petitioner and O.P. No. 2 in which latter was aided by the functionaries of his employees' Union, and that the alleged episode had taken place in the office of the college. There was surely no intention to provoke breach of peace, not it had any such potential. I am, therefore, convinced that no prima facie is made out within the meaning of Section 504, I.P.C. and the cognizance under this section is bad in law.

7. Learned Counsel for the petitioner lastly submitted that this is a counter blast to the aforesaid police case started by the petitioner herein against opposite party No. 2. The alleged occurrence is said to have taken place on 5-12-92, and the petitioner herein had with utmost promptitude lodged her written report with the nearest police station, whereas opposite party No. 2 herein had lodged the present petition of complaint (Annexure-1) with regard to the same occurrence on 17-12-92, giving a fundamentally different version of the occurrence. In order to cover up the delay, in her submission, he stated in paragraph 5 of the petition of complaint (Annexure-1) that he had lodged his FIR on 5-12-92. She submitted that the situation was accentuated by the arrest of opposite party No. 2 herein on 5-12-92 with must have enraged him and he, therefore, lodged the complaint petition as soon as he came out of the jail. She has relied on the judgment of a Single Judge of this Court, passed in Cr. Misc. No. 6017 of 1993, disposed of on 27-7-99, and reported in 1999 BCCR 887 G.C. Bahuguna v. State of Bihar.

7.1. Learned Counsel for opposite party No. 2 has submitted in reply that the delay is clearly explained in the petition of complaint itself which had occurred due to his arrest. He has further submitted that the factual matrix of Bahuguna's case (supra) was quite different and, therefore, does not apply to the facts and circumstances of the present case. He has further submitted that the impugned order is a perfectly legal order and cannot be faulted on any count. On the basis of the allegations made in the petition of complaint, a prima facie case is made out against the petitioner to go to trial, and that the petitioner is not entitled to raise her defence in a complaint petition.

7.2. Having considered the rival submissions, I am of the view that the contention on behalf of the petitioner must succeed. Learned Counsel for the petitioner is right in her submission that the present complaint case is a counter blast to the police case. It is manifest on the face of the records that piqued by his arrest, opposite party No. 2 wanted to teach a lesson to the petitioner and, therefore, lodged the aforesaid police case on 17-12-92. His case in the petition of complaint that he had lodged his F.I.R. on 5-12-92 is on the face of it palpably false. The police machinery is duty-bound to register fardbeyans and lodge FIRs. Furthermore, it is manifest from the allegations stated in paragraph 4 of the petition of complaint (Annexure-1), opposite party No. 2 had gone over to the petitioner's office on 5-12-92 along with the functionaries of his employees'

Union. This speaks volumes. This was undoubtedly was a concerted and blatant attempt on the part of O.P. No. 2 and his hoodlums to terrorise the ladies working in the office. It is manifest from the chain of circumstances that opposite party No. 2 was outwitted by the timely police report lodged by the petitioner as a result of which he was arrested. Had the alleged occurrence taken place in the manner stated in the petition of complaint, then the functionaries of the employees' Union accompanying O.P. No. 2 must have lodged the F.I.R. and pursued it during the period of the petitioner's incarceration. It appears to me that O.P. No. 2 after his release on bail must have become wiser by reading the police report and filed the petition of complaint as a counter-blast to the police report and also teach a lesson to the petitioner. In such circumstances, I am convinced that the case made out in the petition of complaint to explain the delay in lodging the petition of complaint is meant only to cover up the delay. I have, therefore, no manner of doubt that the present complaint petition is not a bona fide prosecution and is a counter-blast to the police case. It is fully covered by the aforesaid judgment in Bahuguna's case. The following observations made therein are particularly relevant in the present context:

...The effort on the part of the complainant before this Court to explain the delay on account of the arrest of the complainant is Unconvincing for the reason that the complainant and his fellow workmen were engaged in a joint venture of trade union activity against the management, Therefore, there can be no doubt that other office bearers and fellow workmen who had taken active part were available to start the criminal case, had the workmen really been victims... .

8. In the result, this application succeed, and the impugned order dated 22-5-93, passed in Complaint Case No. 911(C) of 1992/T.R. No. 630/ 93, is hereby set aside. As stated above, Kotwali P.S. Case No. 554/92/ T.R. No. 123 of 98 State v. Lal Mohan Mistry, awaits trial in the Court of learned Magistrate, Patna. That being a fairly old case, the Magistrate is hereby directed to conclude the trial within a period of six months from the date of production/receipt of a copy of this judgment. It goes without saying that the observations made hereinabove are meant for disposal of the present quashing petition only.