
(2004) 02 PAT CK 0069

In the Patna High Court

Case No : Or. Cr. Miscellaneous No. 5 of 2004

Smt. Usha Basant Dikshit

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-02-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 160, 353

Citation : (2004) 3 PLJR 175

Hon'ble Judges : Ravi S. Dhavan, C.J.; Shashank Kr. Singh, J

Bench : Division Bench

Advocate : Rajendra Pd. Singh and Manan Kr. Mishra, for the Appellant; S.D. Yadav, for State, B.K. Halder, Home Commissioner, Deepak Prasad, District Magistrate, W.H. Khan, Director General of Police, Nayyar H. Khan, Sr. S.P., Ganesh Kumar, City S.P., Md. Hasnain, Dy S.P. and Pramod Kumar, Police Inspector, for the Respondent

Judgement

1. This matter has taken the best part of the first session of the Court. A petition was lodged by the President, Lawyers' Association, Patna High Court yesterday. It enclosed a letter to him from a woman Advocate intimating an incident of violence on her family. The letter of the President, Lawyers' Association, has nothing to do with any aspect of the professional practice at the High Court but a simple information, to the effect, that while she and her husband were away to a Shradh ceremony in their family, they had left their two children at home. One is a girl, aged 15 years, and a boy aged 13 years. The girl is preparing for the High School examination. The boy is studying in Class VII. When they returned from the Shradh ceremony, the mother Smt. Usha Basant Dikshit, otherwise an Advocate of the High Court, discovered that her children were not at home together. Her daughter was at home. But her son had been admitted at a local hospital as his right arm had been fractured and was in a plaster.

2. When she made inquiries she was told that the police personnel from the local Danapur Police Station, entered the house and beat up the boy.

3. Her husband is an Additional District Judge at Arrah. He was not in Patna but at the Station of his posting. Whatever may be the version of the story on either side, one thing is that the two children were alone in their house while their parents were away. Whatever may have happened, the boy received grievous hurt. It is alleged that he was assaulted. This is what the mother reports.

4. This Court will leave the record in a state that if the police has a version on the incident it may not be misunderstood that the parents of the children may not have their side of the story. While the police readily records its own version on its records whether the general diary or a First Information Report there were no takers to take down the report of the mother when she desired to file a report. She desired that it be recorded that her son had been assaulted; that the privacy of her home was breached, that there was a criminal trespass into her home and the children were intimidated and the minor son was assaulted. Subsequently, it was alleged that the mother herself was intimidated, when she wanted to institute a report against the police.

5. What concerns the Court is why the First Information Report of the mother was not recorded? The police station readily recorded a report in its diary. The Court is not recapitulating what was argued at the bar because this may perhaps prejudice the trial but what is on record cannot be changed now. The police version is that on 13 February, 2004 in front of a local college there was "affray" and that with the aid of police force this collection of students was chased away and one little boy fell down and received simple hurt.

6. Between the simple hurt recorded in police records and what turned out to be a grievous hurt with multiple fractures and the hand in plaster there is much to be explained. In the circumstances, notwithstanding that there are reports already, the Court called upon State doctors led by Dr. K.P. Sinha to examine the injury report and the X-Ray plates, being carried by counsel for the mother, and whatever be his conclusion on the injury, which the boy carries on his plastered hand as of now, the report be submitted for the Magistrate concerned where the case is pending. It will be forwarded by the Registrar General, High Court.

7. The proposition was put to the government Advocate present at the Bar along with the police officials from the Director General of Police downwards, not excluding the presence of the Home Secretary, that if the mother's version was also to be taken could the possibility be ruled out that there needs to be an investigation beyond "160" and "353" recorded by the police, This is in the context of Section 160 and Section 353 of the Indian Penal Code.

8. According to the police the whole issue is simple. Whenever it may have taken place, of an "affray" against a public servant that the station officer incharge of the police station having been deterred from discharging his duty. This may be one aspect of it.

9. On the mother's side it comes down to this: Her son has been hurt. Who caused it? Was it simple hurt? When did it happen? Was it grievous hurt? She

alleges house trespass, criminal trespass, criminal intimidation and she alleged intentional insult to provoke breach of peace in her surroundings. This was the proposition which was put to the Government Advocate that when an investigation is made it cannot be the police version only that the matter be confined to Section 160 and Section 353 of the Indian Penal Code. The Court can make no comments today, as this petition comes in the jurisdiction of the High Court's prerogative writ jurisdiction as a Court of Record. But, there is much more to be looked into beyond what is before the court today.

10. The original record of the matter, the incident as recorded by the police on it's records of a claimed episode on 13 February 2004 was not made available to the High Court despite this having been clearly indicated to the Government Advocate yesterday. In fact, this was the only material which the court had desired. Why was this record kept away in a matter in which the Home Secretary, the Director General Police, Bihar and the Police Officers below were present? There appears to be lack of confidence on the credibility of the record and what may be recorded whenever. The Magistrate will be free to draw his conclusions under the law. Learned Government Advocate took instructions and stated that the complaint as alleged by the mother will be inquired into. Indeed, it has to be.

11. it was being attempted to be indicated to the Court that the Director General of Police proposes to take serious action against the Station House Officer and to transfer him out and send him to the "lines". This is formula of police mediocrity in answering answerability. On behalf of the Petitioner, her counsel submitted that his particular Station House Officer has remained at the Danapur Police Station for an unusually stretched tenure, and that this officer claims immunity from transfer as an office bearer of art association of policemen. It was also submitted that there is protection from politics to this officer. There must be, otherwise if what is contended is correct then the tenure of posting is abnormally long. But, there is no such thing as a protected officer or civil servant immune from transfer merely because the officer happens to be an office bearer of a staff association. Even a Hon'ble Member of the Legislative Assembly cannot claim privilege beyond the duration of the life of the House. A staff office bearers' association can have officer-bearers whose tenure is limited to an annual election, no different than a corporate body. A policeman's association cannot have different standards. Otherwise, the result will be unhealthy as is being indicated to the court in this case on behalf of the Petitioner. It was being indicated to the Court that there is a direct nexus between political patronage interfering with transfer of police personnel. If the details were recorded there is police protection to political mafia and vice-versa. Some cases were mentioned. The Court does not desire to record unless on record.

12. Suffice it to say that the incident the like of which has been reported to the Court has only been reported because the mother of the victim happens to be an Advocate and having assistance from the President, Lawyers' Association, High

Court. Otherwise, in the normal course this virtually happens in Bihar everyday. An aspect sufficiently noticed on the record of C.W.J.C. No. 1311 of 2003. The fact that First Information Reports are not recorded when citizens go to report them is a never ending story and this is one live case which only shows the reality of the situation.

13. The Magistrate before whom the complaint of the mother, Usha Basant Dikshit, is pending will ensure a thorough investigation and proceed with the complaint without adjournments, unless there is a pressing justification for it.

14. The record, with the observations as made above, is consigned.