
(2010) 08 PAT CK 0082
In the Patna High Court

Sri Kant Mandal

APPELLANT

Vs

The State of Bihar and Shailendra Kumar Sharma

RESPONDENT

Date of Decision : 18-08-2010

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 118, 120B, 147, 148, 149
Representation of the People Act, 1951 — Section 135, 136A

Citation : (2010) 08 PAT CK 0082

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rakesh Kumar, J.—The sole petitioner, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, has prayed for quashing of an order dated 8.5.2001 passed by Sri R.P. Asthana, Judicial Magistrate, Aurangabad in Complaint Case No. C-295 of 2001, Trial No. 988 of 2001. By the said order, the learned Magistrate has taken cognizance of offence under Sections 147, 148, 323, 325, 504, 118, 120B, 153A/149 and also 307 of the Indian Penal Code, Section 27 of the Arms Act and under Sections 135 and 136A of the Representation of People Act.

2. Short fact of the case is that Opp. Party No. 2 filed a complaint on 26.4.2001 in the court of the learned Chief Judicial Magistrate, Aurangabad disclosing therein that on 23.4.2001 he was Polling Agent of one Bameshwar Sharma for the post of Mukhiya. It was further disclosed that the petitioner was deputed there as Sub-Inspector of Police and it was alleged that the petitioner assisted the members of M.C.C. with a view to capture the Booth. It has also been alleged that the petitioner has abused the complainant and thereafter he had assaulted him. Other several allegations have been levelled against the petitioner in the complaint petition with regard to capturing the Booth etc. by assisting other accused persons. It was alleged that the petitioner has unauthorisedly detained

Opp. Party No. 2 and two other persons, arrested them and assaulted all the arrested persons. The complainant had alleged that Arms Guard and other persons had also indulged in the crime. After filing the complaint, the complainant was examined on SA. and in support of the complaint petition, some witnesses were examined at the enquiry stage and thereafter on 8.5.2001, the learned Magistrate took cognizance of offences against accused persons including the petitioner and summoned all the accused persons.

3. Aggrieved with the order of cognizance dated 8.5.2001, the petitioner approached this Court by way of filing the present petition and this petition was admitted on 17.1.2002. While admitting, it was directed that during the pendency of this application further proceeding, so far as it relates to the petitioner, in Complaint Case No. 295/2000 (Trial No. 988 of 2001) pending in the court of Sri R.P. Asthana, Judicial Magistrate, Aurangabad, shall remain stayed and order of stay is still continuing. At the time of admission itself, Opp. Party No. 2 had appeared through his counsel. However, at the time of hearing none has come forward in support of Opp. Party No. 2.

4. Sri Krishna Prasad Singh, learned Senior Counsel appearing on behalf of the petitioner, while challenging the order of cognizance as well as the entire prosecution, submits that the complaint petition was itself filed maliciously and with a view to create a defence in Goh P.S. Case No. 29 of 2001. Learned Senior Counsel for the petitioner, while referring to the complaint petition, submits that the complainant himself has admitted that he was arrested in Goh P.S. Case No. 29 of 2001. Learned Senior Counsel for the petitioner has also argued that fact remains that the petitioner was discharging his official duty and since Opp. Party No. 2 and several other villagers of Opp. Party No. 2 had committed offence of loot of the ballot papers, the petitioner in discharge of his official duty had taken steps for arresting the accused persons along with several other police personnel. While referring to Annexure-2 to the petition, i.e. a typed copy of the F.I.R. of Goh P.S. Case No. 29 of 2001, Sri Krishna Prasad Singh, learned Senior Counsel for the petitioner has argued that the said F.I.R. was registered on the basis of report submitted by the Presiding Officer of the Booth. In the F.I.R. itself, the Presiding Officer has categorically stated that the accused persons were members of ?Ranveer Sena? and they had captured the Presiding Officer also and thereafter had committed loot of ballot papers, which have been described in detail in the F.I.R. After looting the ballot papers they had committed several offences and only after noticing that other police vehicles were arriving, accused persons fled away and while fleeing away, the police party including the petitioner apprehended three accused persons including Opp. Party No. 2, who is the complainant. The said F.I.R. was registered against altogether 21 named accused persons.

5. On the aforesaid facts and circumstances, it was submitted that the order of cognizance and entire prosecution is liable to be set aside firstly on the ground that the same was filed maliciously and secondly it was filed with a view to

create a defence in Goh PS. Case No. 29 of 2001 and also in the case sanction for prosecution was not obtained before taking cognizance of the offences.

6. Smt. Indu Bala Pandey, Learned Addl. Public Prosecutor appearing on behalf of the State has opposed the prayer of the petitioner and submitted that entire materials can be looked into at the appropriate stage before the court below and, accordingly, she has prayed to reject the present petition.

7. Besides hearing learned Counsel for the parties, I have also perused the materials available on record. So far as the question of sanction for prosecution is concerned, the Court is of the view that the question of sanction can be considered at the appropriate stage and on the ground of non-availability of the prosecution sanction, the order of cognizance in the present case is not liable to be set aside. So far as other two grounds, i.e. malicious prosecution and creation of defence are concerned, the Court is in agreement with the submission made by Sri Krishna Pd. Singh, learned Counsel appearing on behalf of the petitioner. From the record, it is not in dispute that the petitioner was arrested along with two other accused persons on a chase by the police officials including the petitioner. It is not in dispute that the petitioner was not deputed at the Polling Booth as Sub Inspector of Police. Keeping in view the allegations made in the F.I.R. i.e. Goh P.S. Case No. 29 of 2001, the Court is of the view that it was duty on the part of the petitioner to prevent any such occurrence at the Booth in question and he was justified in arresting Opp. Party No. 2 and other accused persons. Once Opp. Party No. 2 was arrested by the petitioner, the complaint filed by Opp. Party No. 2 on the allegation that he was illegally detained by the petitioner becomes meaningless. On the basis of materials available on record, the Court is satisfied that filing of the complaint petition was itself malicious. The Court is further satisfied that the present complaint was filed by the complainant only with a view to create a defence and frustrate the accusation made in Goh P.S. Case No. 29 of 2001.

8. Accordingly, the Court is of the opinion that it is a fit case for exercising inherent jurisdiction in favour of the petitioner and, as such, order of cognizance dated 8.5.2001 passed in Complaint Case No. 295 of 2001, Trial No. 988 of 2001 by Sri R.P. Asthana, Judicial Magistrate, Aurangabad is hereby set aside and the petition stands allowed.