

(2006) 12 PAT CK 0049

In the Patna High Court

Case No : Criminal Miscellaneous No. 36772 of 2006

Sudhanshu Bhushan Ram and Another

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 15-12-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 202, 482
Penal Code, 1860 (IPC) — Section 120B, 166, 167, 19, 21

Citation : (2007) 2 PLJR 148

Hon'ble Judges : Ghanshyam Prasad, J

Bench : Single Bench

Advocate : Deo Nr. Yadav and Suraj Yadav, for the Appellant; Gopesh Kumar, for the Respondent

Final Decision : Allowed

Judgement

Ghanshyam Prasad, J.—Heard. This application u/s 482 Cr.P.C. has been filed to quash the order of cognizance dated 7.2.2005 passed by Sri R.K.P. Bharti, Judicial Magistrate, 1st Class, Jhanjharpur in C.R. No. 728 of 2003, Trial No. 1950 of 2005 as well as its revisional order dated 26.6.2006 passed by Sri B.N. Pandey, Additional Sessions Judge-I, Madhubani in Cr. Revision No. 35 of 2005 as also entire criminal proceeding.

2. This case is glaring example of misuse of process of the court. The impugned orders passed by two different judicial officers are not only illegal but also depict that the officer concerned lack even basic knowledge of criminal law.

3. The relevant facts which give rise to this application are that one Lallu Yadav and Pavitra Yadav, arrayed as accused nos. 1 and 2 in the complaint case, filed a petition on 15.7.2002 before the Court of S.D.O., Phulpras for correction of jamabandi in respect of land appertaining to Khata No. 319 situated in village Rajaura Math, P.S. Andhra Math, District Madhubani and also for directing the concerned officials to issue rent receipt in their name in respect of the above lands. The learned S.D.O. called for a report from the C.O., Laukhi. The C.O.

after obtaining reports from concerned C.I. and Karamchari sent the same to S.D.O. vide Annexure-1. Thereafter, the learned S.D.O. issued notices to the complainant/opposite party no. 2 and others. The opposite party no. 2 appeared and filed show cause along with all papers concerning his title and possession over the land in question. However, the S.D.O., who is petitioner no. 1, vide order dated 25.1.2003 allowed the prayer of the accused nos. 1 and 2 and directed the C.O., who is petitioner no. 2, to realise rent from the accused nos. 1 and 2 in respect of the lands claimed by them.

4. Being aggrieved by the above decision of the petitioner no. 1, the opposite party no. 2 filed a complaint before the Court of the C.J.M., Jhanjharpur with allegation that all the accused persons including petitioner nos. 1 and 2 in collusion with each other in order to grab his land passed the above order in favour of the accused nos. 1 and 2. The complaint case was numbered as C.R. No. 728 of 2003. The same was ultimately transferred to the Court of Sri R.K.P. Bharti, Judicial Magistrate for enquiry and trial u/s 202 Cr.P.C. The learned Magistrate after enquiry took cognizance against the " six accused persons including the petitioners under sections 166, 167, 420, 467, 468, 469 and 120B of the I.P.C.

5. The petitioners preferred criminal revision against the above order of cognizance before the Court of Sessions Judge, Madhubani which was ultimately heard by Additional Sessions Judge-I. Unfortunately, the learned Additional Sessions Judge also rejected the revision vide impugned order.

6. The submission of the learned counsel for the petitioners is that the prosecution of the petitioners is not only malicious but also misuse of process of the court. The petitioner no. 1 passed the order in question in a legal proceeding as a "Judge" and, therefore, he is protected u/s 77 of the I.P.C. as well as 197 Cr.P.C. The petitioner no. 2 who acted in pursuant to the order passed by the petitioner no. 1 in due discharge of his official duty is also protected u/s 78 of the I.P.C. as well as u/s 197 Cr.P.C. It is further submitted that there is no question of wrongful loss or gain to any parties as the order passed by the petitioner no. 1 has already been stayed by the Additional Collector, Madhubani vide order dated 12th September, 2003.

7. On the other hand, the learned counsel for the opposite party submits that the petitioner no. 1 had no power to hear the matter of revenue. He is illegally and without having jurisdiction, in collusion with other accused persons passed the order in question on extraneous consideration only for the purpose of illegal gain and wrongful loss to the opposite party no. 2.

8. Sections 77 and 78 of the I.P.C. are under Chapter-IV which provides General Exceptions from criminal prosecution to certain class of persons. Sections 77 and 78 I.P.C. run as follows:

"77. Act of Judge when acting judicially.--Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in

good faith he believes to be, given to him by law.

78. Act done pursuant to the judgment or order of Court.--Nothing which is done in pursuance of, or which is warranted by the judgment or order of, a Court of Justice; if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction".

9. Section 77 protects "Judges" from criminal prosecution for any act done in discharge of their judicial functions even in cases where he exceeds his jurisdiction and has no lawful powers. Whereas Section 78 I.P.C. protects the officers who act in pursuant to the orders passed by any court not withstand the court may or may not had jurisdiction to pass such orders.

10. The word "Judge" has been defined in Section 19 of the I.P.C. which runs as follows:

"19. "Judge".--The word "Judge" denotes not only very person who is officially designated as a Judge, but also every person,

who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or

who is one of a body of persons, which body of persons is empowered by law to give such a judgment."

11. Thus, the word "Judge" not only includes a person who is officially designated as such but all such person who is empowered by law to pronounce judgment or order in a legal proceeding including civil, criminal and revenue.

12. There is no doubt that petitioner no. 1 while hearing the Misc. case filed by the accused nos. 1 and 2 in presence of the opposite party no. 2 for correction of jamabandi acted as "Judge" as defined above and passed order in a legal proceeding and, therefore, Section 77 of the I.P.C. comes to his rescue. It is immaterial whether he had jurisdiction to hear such case or not. Proceeding of correction of jamabandi is a legal proceeding against which there is a provision for appeal before the higher revenue court.

13. There is another aspect of law. Section 197 Cr.P.C. also provides cover to petitioner nos. 1 and 2. According to this provision no court shall take cognizance of any offence alleged to be committed by Judge or Magistrate or public servant while acting or purporting to act in the discharge of his official duty except with prior sanction of the Government concerned. In Section 21 of the I.P.C. the word "public servant" has been defined. Undoubtedly, both the petitioners fall under the definition of public servant. Admittedly, petitioners have been prosecuted and cognizance has been taken against them without obtaining any prior sanction

from the competent authority of the State Government. Therefore, the impugned order of the cognizance so far it relates to the petitioners is bad in law.

14. Thus, having regard to the above facts and circumstances as well as law, it is quite clear that the prosecution of the petitioners is not only malicious and misuse of process of the court but also hopelessly barred under various provisions of law. It is unfortunate that these petitioners have been unnecessarily been dragged in such nature of criminal case due to lack of basic knowledge of law on the part of above named two courts. Summoning public servant or Judge in a mechanical manner without applying minds to the facts and law applicable thereto is a serious matter. Taking cognizance in such matter and summoning the public servant amounts to encouraging filing of frivolous and malicious criminal case, just to harass and humiliate the officers. Accordingly, this application is allowed and the impugned orders are hereby quashed so far it relates to the petitioners.