

(2009) 11 JH CK 0136
In the Jharkhand High Court

Sudhir Prasad Sinha, Bindeshwari Lal and Ram Chandra Prasad

APPELLANT

Vs

The State of Jharkhand and Ram Naresh Singh

RESPONDENT

Date of Decision : 03-11-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 245
Penal Code, 1860 (IPC) — Section 147, 448, 504

Citation : (2009) 11 JH CK 0136

Hon'ble Judges : D.K. Sinha, J

Bench : Single Bench

Judgement

D.K. Sinha, J.—The petitioners have invoked the inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure for quashment of the entire criminal proceedings initiated against the them in Complaint Case No. 748 of 1996 including the order impugned dated 17.8.2001 passed by Smt. Rita Mishra, Judicial Magistrate, Ist Class, Dhanbad by which discharge petition filed on behalf of the petitioners under Sections 245 of the Code of Criminal Procedure was dismissed and that: was affirmed by the Additional Sessions Judge, IX Dhabad in Cr.Rev. No. 51 of 2001 on 20.8.2005 upholding the order impugned dated 17.8.2001.

2. The prosecution story in short was that a complaint was lodged by the complainant-opposite party No. 2 herein against the petitioners stating inter alia that his father Ram Prit Singh was an employee of M/s Tata Iron and Steel Co. Ltd. and was allotted a quarter by the said company. His father retired from the service of the said company on 21st of February, 1978. Although his father had applied for the service of the complainant-opposite party No. 2 on his place but it was not considered and in the meantime his father died on 13.4.1987. On the alleged date of occurrence i.e. 16.10.1996 it was stated that the petitioners along with 5 to 6 unknown persons entered into the quarter of the complainant-opposite party No. 2 and asked him to vacate the quarter immediately which was opposed and protested by the complainant-opposite party No. 2 stating that

unless the dispute between him and the TISCO was settled he was not going to vacate the quarter, moreover, a Title Appeal No. 60 of 1995 was also pending in the court of the District Judge, Dhanbad in respect of the said quarter. Such reply of the complainant-opposite party No. 2, provoked the petitioners who used some filthy and abusive language and also manhandled by dragging the complainant-opposite party No. 2 out from his quarter. However on timely interference of the witnesses, the petitioners and other accused persons left the place of occurrence but by extending threat to the complainant- opposite party No. 2. After enquiry into the complaint lodged, cognizance of the offence was taken against the accused persons including the petitioners under Sections 147/448/323/504 of the Indian Penal Code and accordingly summons were issued. The petitioners then preferred a petition u/s 245 of Code of Criminal Procedure for their discharge which was rejected by the Trial Magistrate observing that there was no provision of discharge in a summons trial case. The petitioner then preferred Cr. Misc. No. 4992 of 1998(R) before the Patna High Court u/s 482 of the Code of Criminal Procedure for declaring that the cognizance order impugned dated 12.5.1998 passed by the Judicial Magistrate Dhanbad in C.P. Case No, 748 of 1996 was not maintainable. The Ranchi Bench of the Patna High Court having considered the petition and relied upon the decision of K.M. Mathew Vs. State of Kerala and another, quashed the order impugned directing the court below to hear the parties afresh and pass a reasoned order on the petition dated 7.8.1997 filed on behalf of the accused-petitioners.

3. Pursuant to such observation made by the then Patna High Court, the petitioners re-agitated their petition u/s 245 of the Code of Criminal Procedure before the Trial Magistrate which was also dismissed by its order dated 17.8.2001. The petitioners then preferred Cr. Rev. No. 395 of 2001 before this Court which was disposed of on 26.2.2002 with the observation that the petitioners should move first before the Sessions court by filing criminal Revision. Pursuant to such observation, the petitioners preferred Cr. Revision No. 51 of 2002 before the Sessions Judge-IX, Dhanbad who after hearing the parties affirmed the order passed by the Trial Magistrate on 17.8.2001 dismissing the discharge petition of the petitioners and hence the instant petition for quashment of the impugned orders. Advancing his arguments learned Counsel for the petitioners submitted that the allegation as made in the complaint petition was false and concocted which was brought about maliciously to harass the officials of the TISCO management who had been requesting the; complainant-opposite party No. 2 for eviction of the quarter in question and in this regard the management adopted legal process which has been admitted in the complaint petition. It was not a fact that the petitioners had either rebuked the complainant-opposite party No. 2 or had applied force in any manner to evict him from the quarter in question as alleged against them. The falsity of the case would be evident from the fact that TISCO Ltd. had been fighting legal battle from 1979 for long 20 years securing eviction of the father of the complainant-

opposite party No. 2 and after his death, the complainant-son who is an Advocate at Dhanbad. The Title (Eviction) suit No. 248 of 1979 filed by the Company was decreed and the same was upheld up to appellate court. At the same time the Company filed a petition u/s 630 of the Companies Act 1956 against the Complainant- opposite party No. 2 for his wrongful possession over the Company's property.

4. The learned Counsel further submitted that Section 147 of IPC in the facts and circumstances cannot be attracted in view of the fact that the complainant in the complaint petition had named only the petitioners but added 2-3 more persons without disclosing names and their specific attribution to bring the case within the purview of Section 147 of IPC. Similarly, Section 448 of IPC is not attracted as the complainant-opposite party No. 2 in his statement in court on solemn affirmation had clearly admitted that he came out from his house when he was called out from outside and this fact was corroborated by other two witnesses i.e. P.W.I and P.W.2 in course of enquiry and therefore, the allegation that the petitioners dragged the complainant out of his house could not be substantiated. As regards Section 504 of the Indian Penal Code is concerned, there was no specific allegation against any of the petitioners about the nature of abusive language or insulting words used by any of them. The witnesses were silent on such allegation against the petitioners of using insulting or abusive language against the complainant. In the facts and circumstances, the learned Counsel submitted that the cognizance of the offence taken under Sections 147/448/504 of the Indian Penal Code against the petitioners could not be sustained. He asserted that no independent witness was examined on behalf of the complainant in course of enquiry and that the P.W.I who was examined, belonged to far away Suburb, popularly known as Sunderpur Basti thus P.W1 could be put in the category of chance witness. Similarly, P.W.2 is the son of the complainant who admitted in his statement in course of enquiry that the petitioners had never visited his quarter earlier and such statement disproved the entire allegation of the complainant.

5. On the other hand Mr. S.N. Das, learned Counsel appearing on behalf of the Complainant- O.P. No. 2 submitted that it was clear assertion of the complainant-opposite party No. 2 in his complaint petition that the petitioners and others had insulted by addressing him "VAKIL- FAKIL" a derogative remark against the lawyers fraternity by profession.

6. Upon conscious consideration of the entire facts and circumstances of the case as well as arguments advanced on behalf of the parties I find that cognizance of the offence was taken against the petitioners and others u/s 147/448/504 of the Indian Penal Code though the learned Counsel appearing on behalf of the petitioners was consistent that no positive materials could be collected against the petitioners in the enquiry but the learned Judicial Magistrate on erroneous consideration took cognizance of the offence under Sections 147/448/504 of the Indian Penal Code and there appears substance in such argument. Admittedly,

the petitioners are employees of the TISCO Ltd. which is now known as Tata Steel who are fighting legal battle for the last 20 years for securing eviction of the quarter in question from unauthorized occupation of the complainant-opposite party No. 2 Title(Eviction) Suit that was brought about was decreed in favour of the TISCO which was upheld up to this Court. I further find from the arguments and assertion made In the complaint petition that a case u/s 630, under penal provisions of the Companies Act 1956 was also instituted by the said Company against the complainant in which final order was passed against the complainant. Yet, when the complainant-opposite party No. 2 lost all his cases, he filed the instant complaint case which can safely be inferred, with the intention to put undue pressure upon the Company by implicating the petitioners who are the employees of the TISCO Ltd. and having no personal grudge or enmity whatsoever with the complainant.

7. It was argued on behalf of the opposite party No. 2 that provision of discharge of the accused as was not available in the summon's trial case, the learned Judicial Magistrate was justified in rejecting the petition filed on behalf of the petitioners under Sections 245 of the Code of Criminal Procedure which was rightly upheld and affirmed by the Additional Sessions Judge-IX, Dhanbad and as such orders impugned did not call for interference by this Court. But the Supreme Court has very well interpreted the law of dropping the proceeding on rescined the process in a summons case reported in K.M. Mathew Vs. State of Kerala and another, and held:

The High Court seems to be too technical in this regard. If one reads carefully the provisions relating to trial of summons cases, the power to drop proceedings against the accused cannot be denied to the Magistrate, Section 204 of the Code indicates that the proceedings before the Magistrate commences upon taking cognizance of the offence and issue of summons to the accused. When the accused enters appearance in response to the summons, the Magistrate has to take proceedings under Chapter XX of the Code but the need to try the accused arises when there is allegation in the complaint that the accused have committed the crime. If there is no allegation in the complaint involving the accused in the commission of the crime it is implied that the Magistrate has no jurisdiction to proceed against the accused....

It is open to the accused to plead before the Magistrate that the process against him ought not to have been issued. The Magistrate may drop the proceedings if he is satisfied on reconsideration of the complaint that there is no offence for which the accused could be tried. It is his judicial discretion. No specific provision is required for the Magistrate to drop the proceedings on rescined the process. The order issuing the process is an interim order and not a judgment. It can be varied or recalled. The fact that the process has already been issued is no bar to drop the proceedings, if the complaint on the very face of it does not disclose any offence against the accused.

8. The decision referred to herein above still holds good as not reported to have

been overruled by subsequent decision. In view of the above discussion and having relied upon the decision referred to above I find that the lower court in succession failed to consider the proposition of law as propounded in K.M. Mathew's case (Supra) and in the given facts and circumstances of the case I find that no offence much less alleged under Sections 147/448/504 IPC could be made out against any of the petitioners thus cognizance of the offence taken against the petitioners under such sections of the Indian Penal Code cannot be sustained in law. As the counsel of the complainant-O.P. No. 2 as well as the A.P.P. failed to show any fresh material beyond what has been discussed herein above, against the petitioners, the; criminal procedure code restricts prosecution of the accused though no express provision of discharge has been codified in a summons trial case. But at the same time law has been laid down by the proposition that in such event the criminal prosecution of the accused should be dropped when there was no material on record to proceed against them.

9. Accordingly the order impugned dated 17.8.2001 passed by the Judicial Magistrate, Ist Class Dhanbad and subsequent order dated 20.8.2005 upholding the above order in Criminal Revision No. 51 of 2001 recorded by the Additional Sessions Judge, IX, Dhanbad are set aside. Consequently, the criminal prosecution of the petitioners arising out of complaint case No. 748 of. 1996 pending before the Judicial Magistrate, Dhanbad is quashed.