
(2010) 04 PAT CK 0116
In the Patna High Court

Tara Devi

APPELLANT

Vs

State of Bihar and Chandra Shekhar Prasad

RESPONDENT

Date of Decision : 06-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 147, 148, 323, 379, 504
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3

Citation : (2010) 04 PAT CK 0116

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rakesh Kumar, J.—Neither any one appeared on behalf of the petitioner nor any one appeared on behalf of opposite party No. 2. However, Mr. Damodar Prasad Tiwary appeared on behalf of the State.

2. The petitioner, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, has prayed for quashing of the entire criminal proceeding as well as Complaint Case No. 57 of 1997 in Kadwa P.S. Case No. 49 of 1998 in which the petitioner was made accused for the offences under Sections 379 of the Indian Penal Code and Section 3(iii)(x) of the SC/ST Act.

3. On perusal of the complaint petition it appears that the petitioner has taken a stand that the complaint petition was filed maliciously. It has been asserted in the present petition that prior to the filing of the case against her, she had filed a complaint case No. 1496 of 1997 dated 29.10.1997 against the complainant in which the learned Addl. Chief Judicial Magistrate, Katihar had taken cognizance of the offences under Sections 147, 148, 323, 379 and 504 of the Indian Penal Code. It has also been stated in the petition that the petitioner has filed a petition before the Officer Incharge, Kadwa Police Station, Katihar on 23.10.1997 alleging therein that the complainant and his wife had cut hundred bamboo trees

forcibly from the petitioner's father land. On perusal of the present petition it appears that the petitioner has prayed for quashing the entire criminal proceedings as well as Complainant Case No. 57 of 1997 in Kadwa P.S. Case No. 49 of 1997 solely on the ground of malicious proceeding.

4. I have minutely perused the present petition. From the petition it appears that opposite party No. 2 filed a complaint case 57 of 1997 alleging therein that four accused persons including the petitioner had committed the offences under Sections 379 of the Indian Penal Code and Section 3(iii)(x) of the SC/ST Act. It further appears that the said compliant petition was referred to Kadwa Police Station for its registration and investigation and accordingly Kadwa P.S. Case No. 49 of 1998 was registered on 18.4.1998. The petitioner in its petition has not bothered even to mention as to whether after registering the first information report the police investigated the case or not, whether final report was submitted or not and thereafter any cognizance order was passed or not. In absence of such pleadings it is difficult for this Court to come to a conclusion as to whether any proceeding was pending before the court or not. In absence of pendency of a proceeding before the court and also in absence of any allegation of abuse of process of court it would be difficult for this Court to exercise its inherent jurisdiction u/s 482 of the Code of Criminal Procedure. On perusal of the present petition it appears that in sum and substance the petitioner has prayed for quashing of the first information report. The contents of the first information report which is based on the complaint petition of the complainant/opposite party No. 2 makes it clear that the offence as alleged by the complainant was committed by the accused persons. Only on the ground that earlier the petitioner had filed a case against the complainant, the petitioner is not entitled to get any relief from this Court that too at this stage. Such defence of malicious prosecution would have been taken at the appropriate stage. This is not the stage for raising all these points that too in absence of pendency of any proceeding before the Magistrate/court.

5. In view of the facts and circumstance mentioned hereinabove, I do not find any merit in this petition. Accordingly, the petition stands rejected.

6. By order dated 5.8.1999 while admitting the present petition, this Court had directed that in the meantime, further proceeding in the court below arising out of Kadwa P.S. Case No. 49 of 1998 shall remain stayed. In view of rejection of the present petition, the order of stay shall stand automatically vacated.

7. Let this order be communicated to the court below forthwith.