

(2017) 11 PAT CK 0071

In the Patna High Court

Case No : Criminal Miscellaneous No. 49901 Of 2014

Vimla Devi

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 01-11-2017

Acts Referred:

Indian Penal Code, 1860 — Section 323, 427, 504
Code Of Criminal Procedure, 1973 — Section 482

Citation : (2018) 2 PLJR 366

Hon'ble Judges : Rajeev Ranjan Prasad, J

Bench : Single Bench

Advocate : Harsh Singh, Anshul Agarwal, Satyendra Narayan Singh

Final Decision : Allowed

Judgement

1. Heard learned counsel for the petitioner and learned APP for the State. Despite service of notice, the opposite party no.2 has chosen not to appear in the present case.

2. Petitioner is aggrieved by the order dated 24.06.2014 passed by the learned Judicial Magistrate-1st Class, Banka in Complaint Case No.C72 of 2014

by which the learned Magistrate has taken cognizance of the offences under Sections 323, 427 and 504 of the Indian Penal Code and decided to issue

summons against the accused persons including the present petitioner.

3. Learned counsel for the petitioner submits that it is a case of malafide prosecution of the petitioner who happened to be the land owner aged about

78 years at the time of alleged occurrence and with whom the husband of the opposite party no.2 had a grievance because she sold her land in favour

of co-accused Anju Devi. Referring to Annexure-4, which is a copy of the certified copy of the sale deed executed by this petitioner on 11.11.2013 in

favour of Smt. Anju Devi, learned counsel submits that, in fact, the husband of the complainant was claiming cultivation on the said land as Bataidar

and was somehow trying to discourage the petitioner from selling the land.

4. Learned counsel submits that a perusal of the complaint case, as contained in Annexure-1, would show that the same has been filed on or after

10.01.2014 i.e. just after execution of the sale deed (Annexure-4). The complainant is an illiterate lady who has stated in her complaint petition that

while she was returning from Kulharia Hat after selling the vegetables, all the accused persons followed her and in the way they asked the

complainant as to why she was not giving vegetables to the accused persons. The complainant alleged that as she replied to the accused persons that

she had provided them on earlier occasions the vegetables free of cost therefore the accused persons should not say like this, allegedly the accused

persons became angry, abused the complainant and then the alleged occurrence took place in which allegation against this petitioner is that she took

away earrings of eight Anas belonging to the complainant. There are allegations that other accused persons assaulted her.

5. Learned counsel for the petitioner has drawn my attention towards the statements made by the complainant on oath and the enquiry witnesses

particularly that of her husband. The husband of the complainant has in course of enquiry stated in answer to the court's query that he was along

with his wife when the alleged occurrence took place, but he categorically said that nothing happened with him. Learned counsel submits that the

nature of allegations, the circumstances explained by the petitioner for such allegations being made against her and the deposition of the husband of

the complainant are clearly suggesting that it is a case of mala fide prosecution of this petitioner. Learned counsel submits that it is not believable that

while the wife was being assaulted by the accused persons the husband remained silent spectator and nothing happened with him. He further submits

that at the old age of 78 years it cannot be believed that the petitioner will indulge in this nature of occurrence. The whole story as made out in the

complaint petition is malicious in nature and the order taking cognizance in the present case has been passed in a routine and mechanical manner.

6. Learned counsel further relies upon the judgment of a coordinate Bench of this Court in the case of Arun Kumar Sharma @ Arun Sharma & Ors.

Vs. State of Bihar & Anr. reported in 2010 (4) PLJR 1096. Paragraphs 8 and 9 of the said judgment on which the learned counsel has placed reliance

are reproduced hereunder:-

8. There could not be any quarrel with the principle of law that the powers of the High Court under section 482 of the Code of Criminal

Procedure were extraordinary, exceptional powers which have to be used very sparingly in rare cases and further that it has never to be

used where the facts constitute an offence only because the accused might have some very strong defence and further because the case may

be of such a class as could be ending in acquittal. The decisions cited by the learned counsel for the opposite party take a view, as

indicated above and this Court is very much aware, that the power is never to be utilized for stifling a legitimate prosecution. But, this has

also to be kept in mind that if the facts admitted directly or obliquely or even the records which are produced which are bilateral between

the parties to a proceeding containing admissions of parties, facts explained away the criminal liabilities of the prospective accused who

could have been summoned, then it may not be a case of putting the accused on trial. In addition to the above, it is also a well known legal

position that after considering the materials produced before it, the court may find it not expedient in the interest of justice to allow the

continuance of the prosecution, if it comes to a conclusion that the very prospect of ultimate conviction of the accused could be bleak. The

forum of courts are sacrosanct and established only for imparting justice. If such a sacrosanct forum is misutilized or is allowed to be

utilized for any oblique purpose, without any real cause for setting the criminal law in motion, then it could simply breed hardship to a

person as his personal liberties and properties may be put to jeopardy. This is the reason that the courts have to act, if it appears to it, that

it was in the interest of justice as also to prevent the abuse of the process of the court that the prosecution should not be allowed to

continue.

9. It was rightly contended by Shri Baxi S.R.P. Sinha, learned counsel for the opposite party that the prospective defence of the accused has

never to be considered for quashing a proceeding in exercise of court's power

under Section 482 of the Code of Criminal Procedure.

But, this has firstly to be found out as to whether the facts which are placed on record by the accused, who has been summoned, were really

his prospective defence or were facts placed so as to explaining away the allegations and making out a case as if there was no commission

of any offence. Such a situation may be available to a court if the accused produced before the court the documents which could contain

admissions of the complainant or which could indicate as to what was the real state of affairs as regards the allegations of commission of

offence. Such admitted facts, if give rise to an inference that the facts alleged in the complaint petition in tandem with the facts brought on

record by the accused through some admitted statements or documents specially in a case of commercial transaction, did not constitute an

offence and merely gave rise to a liability which could be adjudicated upon by the Civil Court, then in that case, it could be utterly an abuse

of the process of the court if such a proceeding is allowed to continue. If the facts appear like, what I have just pointed out, then the case

presented before the court through some admitted documents, ceases to be the defence of an accused and becomes the bilateral statements

of the parties to the proceedings and that document must not be ignored as, ultimately, the purpose of vesting the High Court with the

inherent powers under Section 482 of the Code is to prevent the abuse of the process of the court and also to ensure the delivery of

justice.â??

7. Learned counsel has further relied upon another coordinate Bench judgment of this Court in the case of Bharat Kishore Narayan Saraswati & Ors.

Vs. The State of Bihar & Anr. reported in 2011 (1) PLJR 755. He has relied upon paragraph 9 of the said judgment, which is quoted hereunder for

easy reference:-

â??9. Further, while exercising the powers under Section 482 Cr.P.C. I am of the opinion that, if a court finds that injustice has been

caused to a party, it is duty bound to come to his aid and protect him from the vagaries of a criminal prosecution, since the entire purpose

of having a hierarchical justice delivery system with wider powers at every stage, is only to ensure that justice is meted out to a party, who

may have suffered on account of the inherent limitations of the subordinate courts.â??

8. I have heard learned counsel for the petitioner and learned APP as also perused the records. The complaint petition has been filed attributing the role to this petitioner alleging that she had taken away earrings while other accused persons assaulted. This petitioner is aged about 78 years which is evident from Annexure-3 i.e. the Voter Identity Card issued by the Election Commission of India on the alleged date of occurrence. Learned counsel has been able to explain mala fide prosecution by referring to Annexure-4 which is a copy of the certified copy of registered sale deed executed by this petitioner in favour of one Anju Devi. The deposition of husband of the complainant saying that he was present and nothing happened with him makes the whole story as stated in the complaint highly improbable. The further fact that despite service of notice the opposite party no.2 has not appeared before this Court to controvert the statements made by the petitioner specifically raising a plea of mala fide and then unimpeachable documents annexed with the petition strengthens the opinion of this Court that the present case has been lodged against the petitioner only with an intention to harass her. The judgments referred by the learned counsel, which have been quoted hereinabove, are very categorical on the point that at the stage of considering the case under inherent jurisdiction this Court can look into the records which are uncontroverted and unimpeachable to prevent abuse of the process of the Court.

9. In the facts and circumstances and in view of the discussions made above, this Court comes to a conclusion that it is a mala fide prosecution of the petitioner and further continuance of the same against the petitioner is only an abuse of the process of the Court. Thus, in the interest of justice, this Court finds it fit and proper to exercise its inherent power.

10. The impugned order is, accordingly, set aside as against the petitioner and the application is allowed.