
(2007) 05 JH CK 0046

In the Jharkhand High Court

Case No : Criminal Miscellaneous No. 8811 of 1999

Vishnu Kumar and Others

APPELLANT

Vs

The State of Bihar (now Jharkhand) and Another

RESPONDENT

Date of Decision : 18-05-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 197(1)

Penal Code, 1860 (IPC) — Section 341, 363

Railway Protection Force Act, 1957 — Section 15, 20, 20(3)

Citation : (2007) 2 BLJR 2417

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Advocate : Mahesh Tiwary, for the Appellant; Shekhar Pd. Sinha, for the Opposite Party No. 2 and , Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—Petitioners have prayed for quashing the entire criminal proceedings initiated against them, pending in the Court of Shri A.K. Singh, Judicial Magistrate, 1st Class, Dhanbad vide C.P. Case No. 574 of 1996 including the order of cognizance dated 06.02.1997, whereby the learned court below took cognizance for the offences under Sections 341/363 I.P.C. against the petitioners.

2. The main ground of attack against the impugned order passed by the trial court and the continuance of the proceedings against the petitioners is that the order of cognizance was passed in a mechanical way without application of judicial mind by the Magistrate and further, that even on the basis of the allegations in the F.I.R., no cognizance for the offences could be taken against the petitioners without prior sanction for prosecution under the provisions of Section 197 of the Code of Criminal Procedure as because the petitioners are Government employees and public servants. Further plea has been taken on the ground that while no specific overt act of violence has been attributed against the petitioner Nos. 1 and 2, the allegations and case of the prosecution against

the petitioner Nos. 3, 4 and 5 suggests that they had visited the place of occurrence in the discharge of their official duties and since the petitioner Nos. 3, 4 and 5 belong to the Railway Protection Force, they are entitled to the benefit of the protection under the provisions of the Railway Protection Force Act in respect of any of their acts and deeds, done in discharge of their official duties and, therefore, they cannot be made liable for any offence at all, much less the offence u/s 341 and 363 of I.P.C. for which they have been called upon by the trial court to face the trial.

3. Heard the learned Counsel for the petitioners and the learned Counsel for the Opposite Parties.

4. For better appreciation of the grounds advanced, reference in brief to the facts of the case may be made. The case against the petitioners was registered on the basis of a complaint filed by the Opposite Party No. 2 in the court of the Chief Judicial Magistrate, Dhanbad. The allegations in the complaint petition are that in the evening of 8.8.1996 the complainant/Opposite Party No. 2, a practicing Advocate of the Dhanbad Civil Court and a daily passenger holding a seasonal ticket of the Eastern Railway, Dhanbad for travelling between Dhanbad and Katras, came to Platform No. 6 at the Dhanbad Railway Station to board a Passenger Train, which was scheduled for departure at 5 P.M. on the alleged date of occurrence. While, he alongwith his friends were sitting in a compartment, the accused persons, namely, the petitioner Nos. 3 to 5 arrived at the Platform alongwith armed guards for checking ticket less travellers. Feeling annoyed, over the delay caused in the departure of the train, the complainant and other passengers requested the accused persons to conduct their checking in course of the travel and should not delay the departure of the Train. A Protest was also made by the complainant and other passengers, to take action against the anti social elements, who were carrying coal, iron and other stolen materials in the same Train. It is alleged that the petitioners reacted to the protest and a hot discussion between the passengers and the accused persons ensued. At that moment, the accused-petitioner No. 3, A.K. Singh, who was the commandant of the R.P.S.F. ordered the armed guards of the R.P.S.F. for resorting to Lathi charge, whereupon the Assistant Commandant, K.D. Banerjee (Petitioner No. 4) and the other Constables, namely, accused Nos. 5 and 6 began assaulting the complainant and the passengers. The complainant lodged a complaint with the senior D.C.M., namely, Vishnu Kumar, (petitioner No. 1) and with the D.C.M., namely, Nalni Parshuramaka (petitioner No. 2), who instead of extending protection to the complainant and the passengers, took no action whatsoever in the matter.

5. Elaborating the grounds advanced by the petitioners, learned Counsel representing them submits that even according to the allegations in the complaint petition, it would transpire that the petitioners, namely, petitioner Nos. 3, 4 and 5 had gone to the Railway platform for checking the tickets of the passengers. The complainant and his associates obstructed the petitioners in

discharge of their official duties by making protests on the plea of delay in the departure of the Train. The admitted case of the complainant is that a hot exchange of words ensued and since the mob became unruly the situation demanded prompt action by way of Lathi charge on the part of the Railway Protection Force.

Learned Counsel argues that in view of the aforesaid facts, the petitioner Nos. 3, 4 and 5 being the members of the Railway Protection Security Force and Public servants, they are protected under the provisions of the Railway Protection Force Act for their acts done in discharge of their official duties and they cannot be prosecuted for any offence without adopting the mandatory procedures for their prosecution. Learned Counsel further argues that even if the allegations against them suggests that they have committed certain excesses in the discharge of their official duties, yet it was incumbent upon the prosecution to obtain prior sanction u/s 197 of the Cr.P.C. for their prosecution and, therefore, in absence of prior sanction, the order of cognizance of the offences against the petitioners, is bad in law and cannot be sustained. Learned Counsel explains further that the petitioner Nos. 1 and 2 are similarly, public servants since they too are Government Railway employees, holding high offices and considering the only allegation against them that they had not offered any protection to the complainant and that they had not taken any action against the alleged offenders, does not constitute any offence and even otherwise, they could not be prosecuted for the said offences without prior sanction for their prosecution.

6. Learned Counsel for the State as also the counsel for the Opposite Party No. 2 while refuting the grounds advanced by the petitioners contend that the grounds advanced by the petitioners are totally misconceived. Learned Counsel explain that it is no part of the official duties of the petitioners to indulge in any unprovoked violence against the complainant and the Railway passengers and, therefore, necessity of sanction for their prosecution u/s 197 of the Cr.P.C. is not required at all. Learned Counsel argue further that in any case, the ground of sanction would in itself be an issue to be considered and decided by the trial court after taking evidence as to whether the alleged acts on the part of the petitioners was or was not in discharge of their official duties.

7. From the facts as stated in the complaint petition, it is not disputed that the petitioner Nos. 3 to 6 were members of the Railway Protection Force (R.P.F.) and was posted at the relevant time at the Railway Station. It is also not disputed that the aforesaid accused persons alongwith other officers had visited the platform for checking ticket-less travellers. As per the case of the complainant, a protest was made by him in respect of the checking, since it was causing delay in the departure of the Train. The protect eventually led to a heated argument and the matter flared up to such an extent that the accused persons were prompted to use violent methods including making a Lathi charge on the agitating passengers. Thus, it has to be recorded that the petitioner Nos. 3 to 6, herein, were members of the Railway Protection Force. The argument of the learned

Counsel for the petitioners that, being the members of the Railway Protection Force, petitioner Nos. 3 to 6 are entitled to protection under the provisions of Section 20(3) of the Railway Protection Force Act, 1957 and the prosecution for any alleged offence cannot continue without observation of the mandatory provisions of the Section, holds substance.

8. Section 20 of the Railway Protection Force Act, 1987 reads as follows:

20. Protection of acts of members of the Force. - (1) In any suit or proceeding against any [***] member of the force for any act done by him in the discharge of his duties, it shall be lawful for him to plead that such act was done by him under the orders of a competent authority.

(2) Any such plea may be proved by the production of the order directing the act, and if it is so proved, the [***] member of the Force shall thereupon be discharged from any liability in respect of that act so done by him, notwithstanding any defect in the jurisdiction of the authority which issued such order.

(3) Notwithstanding anything contained in any other law for the time being in force, any legal proceeding, whether civil or criminal, which may lawfully be brought against any [***] member of the Force for anything done or intended to be done under the powers conferred by, or in pursuance of, any provisions of this Act or the rules thereunder shall be commenced within three months after the act complained of shall have been committed and not otherwise; and notice in writing of such proceeding and of the cause thereof shall be given to the person concerned and his superior officer at least one month before the commencement of such proceeding.

9. As stated above, petitioners Nos. 3 to 6, being the members of the Railway Protection Force at the relevant time, are deemed by virtue of Section 15 of the Act to have always been on duty. It may be noted that even according to the allegations in the complaint petition, command was issued to the petitioner Nos. 3 to 5 for resorting to Lathi charge and it was in compliance to the command given by their superior in Office, the use of force was resorted to by the petitioner Nos. 3 to 6. It is, therefore, apparent that the alleged act of the petitioner Nos. 3 to 6 was in discharge of their duties as members of the Railway Protection Force. In view of Section 20(3) of the Act, prosecution against the aforesaid members of the Railway Protection Force could only have been commenced after a prior notice in writing of such proceeding and of the cause thereof to the petitioners themselves as well as to their superior in office. This requirement of Section 20(3) of the Act has not been complied with and it must, therefore, followed with the prosecution of the petitioner Nos. 2 to 6 as instituted against them is not valid.

10. As regard the petitioner Nos. 1 and 2, it would appear from the allegations in the complaint petition that the only grievance against them as made by the complainant is that on being informed by the complainant regarding the acts of

high-handedness and violence indulged by the members of the Railway Protection Force and other Officers, the petitioner Nos. 1 and 2 did not offer any help nor took any action on the complaint of the complainant. This in itself does in no way constitute any offence against the petitioner Nos. 1 and 2 for which the cognizance was taken by the learned court below. The grounds advanced by the learned Counsel for the Opposite Party No. 2 that the issue of sanction for prosecution would in itself constitute an issue to be considered by the trial court, does not appear to be persuasive. The averments made in the complaint petition of the complainant are clear and unambiguous when it declares that the petitioners including petitioner Nos. 1 and 2 are Government servants under the Indian Railways and the alleged acts attributed to them are acts, which were apparently committed in exercise of their official duties though may be in excess of discharge of their official duties. Therefore, there could be no controversy regarding the fact that even if the petitioners are intended to be prosecuted for the offences, but such prosecution can be initiated only after sanction obtained from the competent authority for their prosecution u/s 197 of the Cr.P.C.

11. The law u/s 197(1), Cr.P.C, debars a Court from taking cognizance, except with the previous sanction of the competent authority concerned. Where the acts alleged in the complaint appear on the face of it to have been committed by the public servant in discharge of his official duties or purporting to be in discharge of his official duties, the prohibition as imposed by the Statute is mandatory and it applies to cases even where the allegations claim certain excesses committed by the public servant while discharging his official duties.

12. In the instant case, cognizance was taken by the court below even in absence of the mandatory sanction for the prosecution of the petitioners and, therefore, it cannot be sustained in law. For the reasons mentioned above, I find merit in this application and, accordingly, the same is allowed. The entire criminal proceeding pending against the petitioners vide C.P. Case No. 574 of 1996 including the order of cognizance dated 06.02.1997 as passed by the learned court below is hereby quashed.