

(2010) 10 PAT CK 0061

Patna High Court

Case No: Criminal Miscellaneous No. 19916 of 2007

Vijay Sankar @ Vijay Shankar
Mishra and Others

APPELLANT

Vs

The State of Bihar and Yogendra
Prasad Singh

RESPONDENT

Date of Decision: Oct. 26, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 145, 482
- Penal Code, 1860 (IPC) - Section 148, 149, 323, 379, 427

Hon'ble Judges: Rakesh Kumar, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Rakesh Kumar, J.

Seven Petitioners, while invoking inherent jurisdiction of this Court u/s 482 of the Code of Criminal Procedure, have prayed for quashing of an order dated 21.7.2006 passed by learned Chief Judicial Magistrate, Patna in Kadam Kuan P.S. Case No. 745 of 2005. By the said order, learned Chief Judicial Magistrate, Patna has taken cognizance of offences under Sections 148, 149, 323, 379, 427, 452 and 504 of the Indian Penal Code while differing with the police report.

2. Short fact of the case is that on the basis of written complaint submitted by Opp. Party No. 2 , an F.I.R. vide Kadam Kuan P.S. Case No. 745 of 2005 was registered . It was claimed by the informant that he was Secretary of Bihar Rajya Arya Pratinidhi Sabha, Patna, the State Unit of the Arya Samaj (hereinafter referred to as "the Pratinidhi Sabha") and on 12.9.2005 the Petitioners along with 70-75 unknown persons stormed the office of the Pratinidhi Sabha. At the time of occurrence, accused persons also opened fire. They removed certain documents as well as cash from the office. It was further disclosed in the F.I.R. that subsequently on 13.9.2005 also the accused persons came and looted Rs. 3000/- from the guest house of the

Pratinidhi Sabha. After registering the F.I.R. the police investigated the case and finally the police came to the conclusion that no occurrence of firing had taken place and it was also noticed by the Investigating Officer that the dispute in between two parties were in respect of continuance with the affairs of the State Unit of Arya Samiti. Accordingly, the police submitted final form. After submission of final report, learned Magistrate differing with the police report has taken cognizance of offences under Sections 148, 149, 323, 379, 427, 452 and 504 of the Indian Penal Code.

3. Aggrieved with the order of cognizance, all the Petitioners approached this Court by filing the present petition. On 26.7.2007 while issuing notice to Opp. Party No. 2, this Court directed that till next date, further proceeding in Kadam Kuan P.S. Case No. 745 of 2005, Tr. No. 1920 of 2006 pending before Sri Sobha Kant Mishra, Judicial Magistrate, 1st Class, Patna shall remain stayed. On 16.9.2008 in view of refusal to accept notice by Opp. Party No. 2, it was deemed as valid service. On 12.5.2009, the case was admitted for hearing and it was directed that interim order of stay dated 26.7.2007 shall continue to operate. At the hearing stage, again notices were issued and finally by order dated 28.4.2010, notice on Opp. Party No. 2 was considered to be validly served. At the time of hearing, none appeared on behalf of Opp. Party No. 2.

4. Sri Rajiv Roy, learned Counsel appearing on behalf of the Petitioners submits that the present case was initiated falsely and maliciously due to the reason that just prior to the occurrence the Committee headed by Mr. Bhup Narayan Shastri, of which the informant was Secretary, was already dissolved. Learned Counsel for the Petitioners has referred to Annexure-3 to the petition, whereby a new Committee under the Chairmanship of Petitioner No. 1 was constituted. It has been submitted that since the earlier committee was dissolved and Petitioners were appointed to function as Pradhan, Up-Pradhan etc, the informant on a false allegation filed the present F.I.R. Learned Counsel for the Petitioners has also referred to number of documents enclosed with the present petition. One of the documents is order dated 1.4.2006 passed in Case No. 7(M) of 2006, whereby a proceeding u/s 145 Code of Criminal Procedure was decided in favor of Petitioners. It has been submitted that during the investigation of the case, the police also found that Petitioners were managing the Bihar Unit of the Pratinidhi Sabha. It has been submitted that since accusations were false, the police did not forward the Petitioners to face trial and final report was submitted. It has further been submitted by learned Counsel for the Petitioners that the learned Magistrate in a mechanical manner has passed the impugned order of cognizance. Accordingly, it has been prayed to set aside the order of cognizance so far as Petitioners are concerned.

5. Smt. Indu Bala Pandey, learned Addl. Public Prosecutor appearing on behalf of the State has vehemently opposed the prayer of the Petitioners. It has been submitted that there were sufficient materials on record to show involvement of the Petitioner in the case and the learned Magistrate has rightly passed the order of

cognizance.

6. Besides hearing learned Counsel for the parties, I have also perused the materials available on record. Of course, at the time of hearing a petition u/s 482 of the Code of Criminal Procedure, it is not required to examine all the documents enclosed with the petition but in the peculiar facts and circumstances of the case, this Court has examined certain enclosures of the petition. Some of the enclosures are copies of judicial orders. From the materials on record, it appears that the dispute was in relation to managing the affairs of the Bihar Unit of Arya Samaj and the same has been corroborated during the investigation. Besides this, learned Magistrate has committed error in taking cognizance differing with the police report without assigning any reason. In case of differing with the police report, it was required to assign some reason. The Court is of the opinion that it is a fit case for exercising inherent jurisdiction u/s 482 of the Code of Criminal Procedure in favor of the Petitioners.

7. Accordingly, the order dated 21.7.2006 passed by learned Chief Judicial Magistrate, Patna in Kadam Kuan P.S. Case No. 745 of 2005 is hereby set aside so far as Petitioners are concerned and the petition stands allowed.