

(2011) 09 PAT CK 0116

Patna High Court

Case No: Criminal Revision No. 201 of 2002

Ram Ayodhya Singh and Others

APPELLANT

Vs

State of Bihar and Birendra

RESPONDENT

Kumar Prasad

Date of Decision: Sept. 15, 2011

Hon'ble Judges: Amaresh Kumar Lal, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Amaresh Kumar Lal, J.

The accused Petitioners have preferred this revision application against the order dated 24.1.2002 passed by the learned X Ith Additional Sessions Judge, Saran at Chapra in Cr. Revision No. 82 of 2000 by which the order dated 7.12.1999 passed by the learned Judicial Magistrate in Complaint Case No. 1332 of 1996, Enquiry No. 100 of 1999 has been set aside and the matter has been remanded to the learned Judicial Magistrate to proceed in accordance with law and the revision petition has been allowed.

2. The prosecution case, in brief, is that Birendra Singh took a house of accused Lakshman Singh on rent, advance money was also given. In one room of the house the complainant has established a motor part shop and in another room there was a shop of chemical fertilizer and in the forth room there was repairing shop of thrasher. In the year 1995, the accused- Petitioners asked and threatened the complainant to vacate a room which was refused. Birendra Prasad, the brother of the complainant filed Title Suit No. 106 of 1995 in the Court of Munsif, 3rd On 18.8.1995 at about 11 a.m. the accused -Petitioners armed with various weapons confined the complainant and his brother and broke open the lock of the three rooms, looted some articles and asked the complainant and his brother to take away the remaining articles. The complainant informed the police about the occurrence.

3. On the basis of the information, Baniyapur P. S. Case No. 129 of 1995 was instituted against the accused. After investigation final form was submitted holding the case as of civil nature. The final form was accepted. After death of the informant, the son of the informant was allowed to proceed with the case and the protest petition was registered as Complaint Case No. 1332 of 1996. Earlier the complaint case was also dismissed by the learned Judicial Magistrate vide order dated 21.5.1997, thereafter the complainant filed Cr. Revision No. 256 of 1997 by which the order dated 21.5.1997 passed by the learned Magistrate was set aside and the case was remanded to the learned Judicial Magistrate for deciding the case. Again after enquiry the learned Magistrate has dismissed the complaint case vide order dated 7.12.1999 Thereafter, the complainant filed Cr. Revision No. 82 of 2000 in which the impugned order passed by the learned Magistrate dismissing the complaint case, has been set aside and the revision application has been allowed and the case has been remanded to the learned Magistrate again to proceed in accordance with law.

4. Learned Counsel for the Petitioners submits that for the same cause of action the complainant had filed Baniyapur P. S. Case No. 129 of 1995. After enquiry final form was submitted in favour of the accused Petitioners holding the case to be of civil nature. Final form was accepted but the complainant filed protest-cum-complaint petition which was registered as Complaint Case No. 1332 of 1996. After enquiry the case has been dismissed. It is further submitted that Birendra Prasad, the own brother of the complainant filed Title Suit No. 106 of 1995 in the Court of Sub Judge praying inter alia to restrain the accused- Petitioners from evicting the Plaintiff from the suit premises and damaging the property. After considering the material on record including the evidence of two enquiry witnesses, learned Magistrate dismissed the protest-cum-complaint petition on 21.5.1997 on the ground that no *prima facie* case is made out against the accusedPetitioners. The suit has also been dismissed on contest vide order dated 31st March 2001. Even after the remand order and further enquiry, learned Judicial Magistrate did not find any material to proceed with the case, as such the complaint petition was dismissed by order dated 7.12.1999.

5. Learned Counsel for opposite party No. 2 has appeared through Vakalatnama but has not contested this revision application.

6. Learned Counsel for the State could not controvert the contention of learned Counsel for the Petitioners.

7. After hearing learned Counsel for both the parties and on perusal of the impugned order, it appears that the learned Magistrate has considered the evidence adduced on behalf of the complainant. It has been found that the occurrence appears to be not believable. It has been alleged that in three rooms the complaint and his brother had shops of different articles and it has been found improbable that articles were put in bag and were taken on bicycle. The dispute has been held to be of civil nature. The complaint and his brother did not want to vacate the house

in dispute and for restraining the accused Petitioners from getting the house vacated the complainant's brother has filed a title suit which has also been dismissed.

8. Considering the facts and circumstances, I do not find any error in the order passed by the learned Judicial Magistrate and the impugned order passed by the learned Additional Sessions Judge setting aside the order dated 7.12.1999 passed by the learned Judicial Magistrate is not proper and it is fit to be set aside. Accordingly, the impugned order is set aside and this revision application is allowed.