

(2010) 11 PAT CK 0116

Patna High Court

Case No: Criminal Miscellaneous No. 25549 of 2003

Dev Chandra Mishra

APPELLANT

Vs

The State of Bihar and Mostt.
Rudo DeviRESPONDENT

Date of Decision: Nov. 3, 2010**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 197
- Land Acquisition Act, 1894 - Section 13A
- Penal Code, 1860 (IPC) - Section 120(B), 323, 420, 465, 466

Hon'ble Judges: Rakesh Kumar, J**Bench:** Single Bench**Final Decision:** Allowed

Judgement

Rakesh Kumar, J.

The sole Petitioner, who was at the relevant time Land Acquisition Officer, Banka, has approached this Court with a prayer to quash an order dated 10.6.2003 passed by the learned Judicial Magistrate, 1st Class, Banka in Complaint Case No. 450 (C) of 2003 , T.R. No. 974 of 2003. By the said order, learned Magistrate has taken cognizance of offences under Sections 420, 465, 466, 468, 470, 471, 323 and 120B of the Indian Penal Code.

2. Short fact of the case is that Opp. Party No. 2 filed a complaint in the court of learned Chief Judicial Magistrate, Banka, which was numbered as Complaint Case No. 450 (C) of 2003 against the Petitioner and others. It was alleged in the complaint petition that the Petitioner in the capacity of the Land Acquisition Officer has illegally and incorrectly given compensation to accused Nos. 1 to 5. It was alleged that the Petitioner had conspired with accused Nos. 1 to 5. It was further alleged by the complainant that the complainant had obtained two certified copies of the order passed by the Petitioner in Compensation Case No. 1 of 2002. It was alleged that

there are some differences in both the ordersheet. Accordingly, it was alleged that the Petitioner had fabricated the ordersheet. It has been alleged in the complaint petition that 1/3rd share was given to accused Nos. 1 to 5. On the aforesaid allegation, the complaint was filed and the learned Magistrate after conducting enquiry has taken cognizance of offences by the impugned order.

3. Aggrieved with the order of cognizance, the sole Petitioner approached this Court by filing the present petition. On 11.5.2004, while issuing notice to Opp. Party No. 2, this Court directed that pending disposal of this application, further proceedings in Complaint Case No. 450 (C) of 2003 pending before Judicial Magistrate, 1st Class, Banka, shall remain stayed. Subsequently, on 23.9.2004, the case was admitted for hearing. Despite the fact that Opp. Party No. 2 had appeared through her Advocate, on none of the occasions at the time of hearing of the present petition, she was represented before this Court.

4. Sri Baidya Nath Thakur, learned Counsel appearing on behalf of the Petitioner, while challenging the order of cognizance and the entire prosecution at the very outset has submitted that whatever action was taken by the Petitioner, was taken in the official capacity, while he was discharging his official duty as Land Acquisition Officer. It was further submitted that the compensation was awarded in 1/3rd share each to the parties including the complainant in view of preliminary decree dated 3.4.2002 prepared in Partition Suit No. 42 of 1995. It was submitted that it is true that preliminary decree was subsequently stayed by this Court on 25.3.2003. However, fact remains that before the stay of the preliminary decree the compensation amount was disbursed to the parties including the complainant on 10.1.2003 and 28.2.2003. So far as allegation of inserting the names of accused No. 1 to 5 in the ordersheet is concerned, it has been submitted that even on earlier occasion order for equal distribution was passed but due to clerical mistake name of Opp. Parties were not mentioned in the ordersheet and at subsequent stage, while exercising power u/s 13A of the Land Acquisition Act, correction was made. It has further been submitted that the Petitioner was discharging his official duty in the capacity of the Land Acquisition Officer and, as such, sanction u/s 197 of the Code of Criminal Procedure was must. However, it was submitted that the learned Magistrate before taking cognizance has not bothered to see as to whether the prosecution sanction issued by the competent Officer was brought or not. Accordingly, it has been prayed to set aside the impugned order of cognizance.

5. Smt. Indu Bala Pandey, learned Addl. Public Prosecutor appearing on behalf of the State has opposed the prayer of the Petitioner.

6. Besides hearing learned Counsel for the Petitioner and the State, I have also perused the complaint petition and the impugned order as well as materials brought on record. After going through the complaint petition, the Court is satisfied that there is no sufficient materials to proceed with the Petitioner who was discharging his official duty as the Land Acquisition Officer and in view of the

preliminary decree the compensation amount was disbursed by the Petitioner.

7. In view of the facts and circumstances of the Case, the Court is of the opinion that it is a fit case for exercising inherent jurisdiction in favour of the Petitioner. Accordingly, the order of cognizance dated 10.06.2003 passed by the learned Judicial Magistrate ,1st Class, Banka in Complaint Case No. 450 (C) of 2003, T.R. No. 974 of 2003 so far as Petitioner is concerned , is hereby set aside and the petition stands allowed.