

(2011) 09 PAT CK 0159

Patna High Court

Case No: Criminal Miscellaneous No. 6775 of 2010

Shambhu Prasad @ Shambhu
Kumar, Umesh Kumar Singh @
Umesh Prasad Singh, Randhir
Kumar Singh and Akhileshwar
Pd. Gupta

APPELLANT

Vs

The State of Bihar and Rejeshwar
Singh

RESPONDENT

Date of Decision: Sept. 16, 2011

Final Decision: Allowed

Judgement

Aditya Kumar Trivedi, J.

The instant petition has been filed u/s 482 of the Code of Criminal Procedure by the Petitioners/accused for quashing the order dated 27.11.2009 passed by Sri R.K. Tiwari, Judicial Magistrate, Sadar Motihari, East Champaran in connection with Complaint Case No. 2042 of 2009, Tr. No. 1498 of 2009 whereby and whereunder Petitioners have been directed to face trial for an offence punishable u/s 323, 504 of the Indian Penal Code.

2. O.P. No. 2, Rajeshwar Singh filed Complaint Petition bearing No. 2042 of 2009 on 14.09.2009 for the date of occurrence 8.9.2009 at 6:00 P.M. against the Petitioners including Amrendra Kumar alleging inter alia that counting for Kuria PACS was going on 8.9.2001 at B.R.C Bhawan, Chakiya wherein Raghaw Singh was declared elected for the post of President. The Certificate was issued by the Nazir at the direction of Agricultural Officer. Then thereafter the opponent Brajesh Singh got himself declared as President taking his undue influence. This caused annoyance to the supporter of Raghaw Singh and accordingly they demanded recounting. Again, Brajesh Singh was declared. Over which the supporters of Raghaw Singh taken to raise their grievances and further intended to place the same before the District Magistrate. The S.D.M., who was present there, directed the B.D.O. to inform police who came and begin to assault supporters of Raghaw Singh who had assembled

outside the premises. During course of which all of them sustained injury and were treated at Sadar Hospital, Motihari. The complainant was leading group of Raghaw Singh who was assaulted by O.C. over his head and hand causing fracture of his hand. Thereafter the villagers blocked NH. The blockade was removed on an assurance of Superior Officer. The O.C. has registered false case to save their skin.

3. On the basis of the aforesaid complaint petition, complainant was examined on S.A. as well as witnesses were also examined during course of enquiry u/s 202 of the Code of Criminal Procedure which was entrusted to a Magistrate by the learned CJM as provided u/s 192(2) of the Code of Criminal Procedure and then by the order impugned dated 27.11.2009 Petitioners including others have been summoned to face trial for an offence punishable u/s 323, 504 of the Indian Penal Code. which happens to be under challenge.

4. It has been contented on behalf of the Petitioners that the order impugned is bad in law as well as on facts. It has further been submitted that from the complaint petition itself it is evident that some case was already instituted at the hands of one of the Petitioners and instant complaint petition was filed after six days without having any cogent explanation of delay. The learned lower court should have considered that instant proceeding happens to be vexatious one and has been filed with mala fide as well as ulterior motive to harass the Petitioners as well as to save their skin from the earlier instituted case which apart from admitted under complaint petition, happens to be annexure-2 and 3 of the petition. Not only this, even taking into account the allegation on its face, the same was done during course of discharge of official duty as the mob assembled at the spot became unruly and so Petitioners would have been given protection of Section 197 of the Code of Criminal Procedure So submitted that in any view of the matter the order impugned happens to be illegal, perverse and cryptic one and is accordingly fit to be set aside.

5. On the other hand, the learned Counsel for the O.P. No. 2 while controverting the submission raised on behalf of the Petitioners submitted that the requirement of holding of an enquiry u/s 202 Code of Criminal Procedure happens to be finding out a prima facie case for the purpose of summoning of the accused, which the learned lower court found. Consequent thereupon, the order impugned is legally maintainable in the eye of law.

6. Coming to the question of sanction, it has been submitted that the sanction can be obtained and be placed at any stage subsequent to taking of cognizance and on the basis thereof, the cognizance cannot be held bad and for that relied upon [P.K. Pradhan Vs. The State of Sikkim represented by the Central Bureau of Investigation,](#)

7. On the other hand, learned APP submitted that in extraordinary circumstances only privilege available u/s 482 of the Code of Criminal Procedure should be allowed to be availed by the Petitioners which should be decided on the facts and circumstances of each case.

8. The ambit and scope of Section 482 of the Code of Criminal Procedure was taken into consideration in a leading decision reported in [R.P. Kapur Vs. The State of Punjab](#), whereunder the Apex Court after summarizing, laid down three broad categories whereunder the High Court would be justified in exercising the power (i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceeding (ii) where the allegations in the FIR or complaint taken at their face value and accepted in their entirety did not constitute the offence alleged, (iii) where the allegations constitute an offence but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

9. The aforesaid three categories have further been taken into consideration in different cases reported in [Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others](#), ; [State of Karnataka Vs. L. Muniswamy and Others](#), ; [Janata Dal Vs. H.S. Chowdhary and Others](#),

10. The aforesaid theme has further been reconsidered in a leading decision i.e., State of Haryana v. Bhajan Lal and Ors. reported in [State of Haryana and others Vs. Ch. Bhajan Lal and others](#), whereunder following categories have been found and formulated for the purpose of application of Section 482 of the Code of Criminal Procedure after magnifying the scope as marked in R.P. Kapoor's case (supra):

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence of make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, on investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient grounds for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceedings is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the

grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

11. Subsequently thereof the aforesaid finding has been found tested in AIR 2005 SC 251, AIR 2009 (7) SCC 495, AIR 2010 CriLJ 3844, [M. Mohan Vs. The State represented by The Deputy Superintendent of Police,](#)

12. In a decision reported in 2011 Criminal Law Journal 2594 at paragraph-13 it has been held:

This Court, in a number of cases has laid down the scope and ambit of the High Court's power u/s 482 of the Code of Criminal Procedure. Inherent power u/s 482, Code of Criminal Procedure though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute.

13. Therefore, the ratio has been settled at rest on this score by the Hon'ble Apex Court in what circumstances the power entrusted u/s 482 of the Code of Criminal Procedure could be invoked and exercised.

14. As disclosed above, the category prescribed under item No. 7 as laid down under Bhajan Lal case clearly distinguishes that where a criminal proceeding is manifestly attended with mala fide and/or wherein the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge having a good ground for application of inherent power.

15. When the facts of the case in hand is taken, it is evident that there is admission on the part of O.P. No. 2 that O.C. had already instituted a case and that finds supported with Annexure-2 and 3.

16. The narration of the complaint petition further goes to show that the O.C. was requisitioned by Executive Magistrate (SDM). The subsequent event is further supported with Annexure-3, Pipra P.S. Case No. 146/09 wherein there happens to be disclosure with regard to lathi charge made over unruly mob who had blocked the NH and caused hindrance in transportation at the order of SDM who was deputed there. Therefore, filing of complaint by the complainant O.P No. 2 after six days giving different colour than it would have been in normal circumstances just attract Clause VII so formulated under Bhajan Lal case (supra)

17. Apart from this, as per Gram Panchayat Raj Act-2006, the Gram Panchayat has been vested with criminal power and as per Section 106, the offence whereunder cognizance has been taken appears to be triable by the Gram Katchahri. Section 113 of the Bihar Panchayati Raj Act-2006 deals with the provision whereunder sub-clause-1 excludes the power of other courts to take cognizance with regard to offence triable by Gram Katchahri. For better appreciation, Subsection-1 of Section 113 is being re-produced which goes like this:

(1) Notwithstanding anything contained in any law for the time being in force, no Court shall take cognizance of any case or suit which is cognizable under the Act by a bench of the Gram Katchahry.

18. Though other kind of powers are vested to the court enumerated therein, by way of exercising the same will put surveillance over Gram Katchahry as provided u/s 115 as well as 118 of the Act, however do not erode the scope of Section 113 of the Act.

19. Thus, taking into account the totality of the event, I found good ground for exercising the power vested under Section-482 of the Code of Criminal Procedure and accordingly, order dated 27.11.2009 passed by Sri R.K. Tiwari, Judicial Magistrate, Sadar Motihari, East Champaran in Complaint Case No. 2042 of 2009 summoning the Petitioners to face trial u/s 323, 504 of the Indian Penal Code is quashed. Consequent thereupon, the instant petition is allowed.