

(2008) 08 PAT CK 0176

Patna High Court

Case No: Criminal Miscellaneous No. 15715 of 2006

Hazi Mohamad Salauddin Haider
and Another

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision: Aug. 14, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 161, 173(2), 190, 190(1)(b)
- Penal Code, 1860 (IPC) - Section 120B, 323, 336, 34, 341

Citation: (2009) 1 PLJR 43

Hon'ble Judges: Abhijit Sinha, J

Bench: Single Bench

Advocate: Gopal Govind Mishra and Vijay Kumar Mishra, for the Appellant; Jharkhandi Upadhaya for the State and Mr. Manoj Kumar Singh for Opp. Party No. 2, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Abhijit Sinha, J.

Two of the seven F.I.R. named accused of Bettiah (Town) P.S. Case No. 299 of 2003 have preferred this application for quashing of the order dated 10.12.2004 passed therein by Sri M.P. Singh, Judicial Magistrate, Bettiah, whereby he has taken cognizance of offences under Sections 341, 323, 504 / 34 I.P.C. against all the named accused including the petitioners. It appears that one Abdul Kalam, an Income Tax Inspector, impleaded herein as Opp. Party No. 2, filed the complaint bearing Case No. 1926C of 2003 inter alia alleging commission of offences under Sections 364, 384, 504, 323, 506, 120B I.P.C, at the hands of the accused persons. It was alleged that at about 6 P.M. on 30.7.2003 he stopped at a shop to buy a pen enroute to his home from his office, a white coloured Marshall Jeep came suddenly and stopped

nearby wherefrom all the accused persons got down, caught hold of him and forcibly pushed him into the jeep wherein his mouth and hands were tied with gamchha and the vehicle sped towards the east. Later on at Motihari he was kept captive in an empty newly constructed house where at about 10 P.M. all the accused came variously armed with revolver and katta and untying him, they at the point of the arms made him sign some blank papers whereafter they misbehaved with him and also assaulted him. Thereafter petitioner No. 2 is alleged to have told him that this being the first occasion he was being spared but he should return home and bring back Rs. 2 lacs within a week failing which he would not be spared a second time. The complainant is said to have expressed his inability to pay as all he had accumulated was towards the marriage of his daughter on hearing which he was again assaulted and reminded to bring the demanded amount with the stipulated time or face dire consequences. The delay in submitting the complaint is attributed to his holding consultations with his colleagues before filing the same.

2. It further appears that the said complaint was transmitted to the concerned Police Station u/s 156(3) Cr.P.C. and on the basis thereof the aforesaid Bettiah (Town) P.S. Case was registered under Sections 341, 342, 323, 336, 506/ 34 I.P.C. and after due investigation a charge-sheet only under Sections 341, 323, 504 / 34 I.P.C. was submitted in court.

3. The impugned order is sought to be assailed by the learned counsel for the petitioners primarily on the ground of non-application of mind judicially by the learned Magistrate who failed to consider the various diverse statements and the discrepancies and contradictions in the statement of the witnesses u/s 161 Cr.P.C. the difference in the location of the place of occurrence as given in the complaint and as found by the Investigating Officer in course of investigation, the relationship between the petitioners and the informant, the enmity between them and the pendency of several litigations inter se. The learned counsel sought to place reliance on several paragraphs of the case diary in this regard.

4. Grievance was also raised over the delay in filing the complaint. In this connection it was sought to be submitted that the complainant/informant was arrested by the Motihari Police on 31.7.2003 on the very next day following the alleged occurrence in connection with T.R. No. 3820 of 2003 and remanded to jail custody on 1.8.2003. In support of his submissions reliance had been placed on Annexure-2, the warrant of arrest dated 19.7.2003. It was submitted that had the alleged occurrence really taken place then he could have informed the police about the same while he was in custody but he did not do so and instead waited till his release from custody and then filed the complaint which only goes to show the falsity and mala fide of the case.

5. Cognizance of an offence and prosecution of an offender are different things. Section 190 Cr.P.C. empowers cognizance of an offence and not to deal with the offenders. When a Magistrate takes cognizance of any offence, cognizable or

non-cognizable, on a police report as contemplated u/s 173(2) Cr.P.C., setting out facts constituting an offence, he takes cognizance u/s 190(1)(b) Cr.P.C. It cannot be said that a valid and legal police report is the foundation of the jurisdiction of the court to take cognizance. Even defect or illegality in the investigation, however serious, has not direct bearing on cognizance or trial. See [H.N. Rishbud and Inder Singh Vs. The State of Delhi,](#). The stage of taking cognizance is not the stage where the Magistrate is required to embark upon an enquiry as to whether the evidence gathered in course of investigation is reliable or not. That is the function of the trial court. The High Court in exercise of jurisdiction u/s 482 Cr.P.C. should be loath in entertaining contentions that on a reasonable appreciation of the evidence the accusations made against the accused would not be sustained.

6. That apart whatever submissions have been raised by the learned counsel for the petitioners is their defence which can only be looked into at the stage of framing of charge or trial and not at this stage. For the reasons stated above, I find no merit in this application which is accordingly dismissed.