

(2010) 05 PAT CK 0091**Patna High Court****Case No:** Criminal Miscellaneous No. 4721 of 2008

K.K. Agrawal (Krishna Kumar
Agrawal)

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT**Date of Decision:** May 14, 2010**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 320, 326

Citation: (2011) 1 PLJR 861**Hon'ble Judges:** Dharnidhar Jha, J**Bench:** Single Bench**Final Decision:** Allowed**Judgement****@JUDGMENTTAG-ORDER**

Dharnidhar Jha, J.

In spite of having received the notice personally, opposite party No. 2 who happens to be the complainant of the complaint petition bearing No. 1463(C) of 2000 chose not to appear before this Court and place his side of the story.

2. I have heard Shri S.D. Sanjay, learned Counsel for the Petitioner and Shri Abhimanyu Sharma, learned Additional Public Prosecutor for the State.

3. On the basis of the abovenoted complaint petition, an enquiry appears made by the Sub-Divisional Judicial Magistrate, Begusarai, and that ultimately resulted in an order dated 14.2.2002 by which the learned Magistrate found that an offence u/s 326 of the Penal Code appeared committed by the Petitioner and other accused named in the complaint petition and, as such, the accused persons were required to be put on trial by summoning them. This is the order which is being assailed and sought to be quashed through the present petition.

4. The contents of the complaint petition were that while the complainant was washing his mouth early on 23.11.2000 at about 7.30 A.M. the Petitioner alongwith the other accused came there by his vehicle and asked the vehicle to be stopped as the complainant was the Advocate who had been filing several petitions before the District Magistrate complainant against the Petitioner. The complainant stated that he sought to be excused but both the accused persons caught him by his collar and dealt two fist blows on his face and in his back. The complainant freed himself and started running away but the Petitioner directed the accompanying accused to chase and catch him and, accordingly, the complainant was caught and thereafter he was assaulted with dandas and was also given a chaku (knife) blow by accused No. 2 which weapon was handed over to that accused by the present Petitioner. The blow was given on the neck of the complainant which bled. He raised a cry which attracted persons who opposed the illegal acts of the Petitioner and another accused and saved him.

5. The complainant alleged further that the accused persons went away holding out threats that if he reported the matter to the police the consequences could be more serious and further, that he went to the Police Station, Bakhari, stated the facts to the Officer-in-charge but he refused taking any action and ultimately he went to a Doctor, got himself treated by him and thereafter filed the complaint petition after his written report was also turned down by the Superintendent of Police, Begusarai.

6. As I have just noted that some witnesses were examined by the learned S.D.J.M., Begusarai and the impugned order was passed.

7. The attention of the Court was drawn to some facets of the case and circumstances which were prelude to the filing of the complaint petition and which could be indicating as to how the allegations contained in the complaint petition were stemming from a deep sense of malice and only with a view to humiliating the Petitioner who was at the relevant date acting as Sub-Divisional Officer, Begusarai. Attention of the Court was also drawn to the fact that the Doctor who had issued the medical report was not qualified to do it and he was using the qualification "M.D." fictitiously and that conduct of his was also enquired into by filing a case and it was found that the Doctor did not hold that particular degree of medicine. It was contended that, in fact, the wife of the complainant, namely, Kumari Manju was doing stamp vending under a properly issued licence to her by the Collector, Begusarai and that licence was cancelled and the information thereof was given to the wife of the complainant. But, still the lady continued dealing in the sale and purchase of the stamp illegally for which a notice was also served upon her but to no effect and, lastly, a search of the business premises of Kumari Manju was conducted and a huge quantity of stamps of different denominations as also some other documents to be used for different purposes in judicial proceedings were recovered. The recovery was made in presence of the complainant on 12.12.1999. The complainant was found sitting at the shop as may appear from Annexure-8

which is the seizure memo prepared in the above behalf. It was contended that having found himself being disturbed in carrying out the illegal trade in stamp and other articles, the complainant being nonplussed and peeved, filed a frivolous complaint petition absolutely on absurd and improbable statements.

8. Shri Abhimanyu Sharma, learned Additional Public Prosecutor has submitted that reading of the complaint petition indicates that some offence appears made out and committed by the present Petitioner and in that light the prospective defence of the Petitioner cannot be considered for quashing the prosecution.

9. Shri Sharma, learned Additional Public Prosecutor has rightly submitted that the prospective defence of an accused has never to be considered by this Court while examining the merit of a petition of- the present nature. But, if sufficient reasons are shown from the documents which could be relevant for the purpose to show that the prosecution was filed only with a view to spitting at the accused or to humiliate him in the eyes of the general public or to wreak vengeance, then in that case the Court cannot deny the prayer of the nature which has been made before me.

10. The opposite party No. 2, the complainant, is not before me and, as such, some of the documents which have been placed as annexures to the present petition have been perused by me without hearing him. These are the documents which were prepared by the public servants in discharge of their official duties and on perusal of such documents, specify, Annexure-8 which was prepared after search of the premises where the activities of stamp vending in the name of the wife of the complainant was being carried out, I find that the complainant was present there at the shop on 12.12.1999, when the seizure of the court fee stamp and other documents was made by the Circle Officer, who has been arrayed as accused No. 2 in the complaint petition. The presence of the complainant is signified by the fact that he had signed the very seizure memo and it has been indicated in column No. 5 of that document that the informant was present in lieu of his wife at the business premises where the search was made. In spite of the licence standing in the name of Kumari Manju, the wife of the complainant, the sale of the stamp, etc. was being carried out by the complainant and, as such, an order was issued to the Circle Officer, Bakhari to take proper action as also to see that the Gumti, which was the business premises in the above context, was removed without any loss of time. In pursuance to Annexure-6 a notice was issued by the Circle Officer, Bakhari (accused No. 2) addressed to Smt. Manju Kumari, wife of Parmanand Hiteshi directing her to remove immediately the Gumti from the premises of the Block Development Office, else, the same was to be removed with the help of the police force. It appears that the orders fell on deaf ears of the complainant or his wife and ultimately it culminated in the raid being conducted in the Gumti.

11. As I have just indicated, the above acts were officially performed or done in pursuance of the orders of the superiors and those acts were necessary to be done

under law inasmuch as there was specific and clear report that the business of sale and purchase of stamp was going on underhand in spite of the fact that the licence in that behalf standing in the name of the complainant's wife had already been cancelled by the Collector. The above acts of issuing notice or searching the Gumti and making the seizure were taking place in some part of the year 1999. The last act of making search and seizure of the Gumti took place on 12.12.1999 and this complaint petition was filed in the year 2000.

12. Thus, what is found by me is that there was a close proximity in the acts officially done by the present Petitioner and the other accused and in the filing of the complaint petition.

13. The patent absurdity and the inherent improbability which I find from the record is that it is not expected that an Officer in the rank of Sub-Divisional Officer in the early hours shall himself go to the house of the complainant, an Advocate and shall himself assault or abuse him. He was an Officer in the Gazetted rank. He was holding the office by which he discharged many quasi judicial functions, besides his chief responsibility of maintaining the law and order in the society. It was within his domain that he had to ensure that illegal activities were not being carried out within his jurisdiction. The other facts were that the Circle Officer had issued notice to the wife of the complainant and he had made a raid in the Gumti and had made search of the court fee stamp which were meant to be sold unauthorisedly and as such illegally. The actions of the Petitioner and the Circle Officer could have obstructed the monetary benefits which the complainant or his wife was deriving out of their business in the illegal sale and purchase of the court fee stamp.

14. These are the absurdities which came into my mind when I consider the allegations. Besides, what is further found by me is that the injury report which was issued in support of the allegations was from a Doctor who was allegedly not holding the degree of Doctor of Medicine. Not only that, the injury which was reported by him to be grievous, i.e., injury No. 1 was only 1/4 in deep and still the Doctor was reporting it grievous. Further, I find that it was not covered by any of eight conditions contained in Section 320 of the Penal Code. It appears that it was by fabrication and the fabrication was to heap humiliation upon a public servant to afflict indignation upon him and, as such, to spit at him and thereby malign his dignity in the eyes of the public. I further find that the intent under which the complaint petition appears filed was to wreak vengeance for the acts which were done by the Petitioner and the Circle Officer, Bakhari (accused No. 2) who had discharged their official duties on the orders of their superior officers. If such a frivolous petition of complaint is allowed to go to trial, it will further humiliate public servants. It will affect moral and courage of the public servants in discharge of their public duties and such complaints shall surely hurdles in performance of their statutory duties. Not only that, such frivolous petitions against the public servants shall be detrimental to the scheme of administration and there may be a chaos all

around.

15. Considering the above facts, I am of the view that the prosecution initiated on the basis of complaint petition No. 1463(C) of-2000 be quashed and, accordingly, the same is hereby quashed.

16. The petition is allowed.