

(2017) CriLJ 3731 : (2017) 4 PLJR 101

PATNA HIGH COURT

Case No: 38993 of 2011

Dr. Syed Mohhammad
Azfar

APPELLANT

Vs

The State of Bihar &
Anr

RESPONDENT

Date of Decision: May 10, 2017

Acts Referred:

- Code Of Criminal Procedure, 1973 (CrPC) - Section 482
- Indian Penal Code 1860, (IPC) - Section 34, 320, 323, 342, 427, 504, 506

Citation: (2017) CriLJ 3731 : (2017) 4 PLJR 101

Hon'ble Judges: Smt. Nilu Agrawal

Bench: SINGLE BENCH

Advocate: Ajay Kumar Sinha, Mukesh Kr. Singh

Final Decision: Allowed

Judgement

1. Heard learned counsel for the petitioner and learned APP for the State.
2. Opposite party no. 2, in spite of notice and appearance on earlier dates, has not appeared on 19.04.2017 and even on 03.05.2017, hence, the matter was heard at length on behalf of the counsel for the petitioner and State.
3. The present application has been filed for quashing of order of cognizance dated 28.01.2011, passed by the learned Judicial Magistrate, 1st Class, Patna in Complaint Case No. 2811(C)/2010 for offence alleged under Sections 323 and 342 of the Indian Penal Code and order of issuance of process along with entire criminal proceedings of Complaint Case No. 2811(C)/2010 instituted by opposite party no. 2 before the Chief Judicial Magistrate, Patna.

4. The facts of the case is that opposite party no. 2, who is the complainant, submitted a written report before the Chief Judicial Magistrate, Patna stating therein that the petitioner is resident of Flat No. 101 at Manjushree Apartment, Gandhi Maidan, Patna where the complainant also resided. The allegation is that on 23.09.2010 at about 8.10 A.M. when the complainant was taking bath, the petitioner forcibly entered his bathroom and tried to commit unnatural offence. On alarm, several persons reached there but the petitioner managed to escape, hence, the complaint case was filed by opposite party no. 2 on 07.10.2010.

5. Learned counsel for the petitioner submits that there is delay in lodging of the complaint case by the complainant and is an afterthought, matter being purely civil in nature and the allegation made against the petitioner is totally false and concocted. The petitioner is a doctor and is posted as Chief Medical Officer in the services of the Government of Bihar. A false case has been instituted against the petitioner as the petitioner was regularly complaining to authorities about the violation of building by-laws and construction by the builder Md. Tashlim. He also filed petition before the ADG, Vigilance Bureau of Patna vide letter dated 26.03.2010 and the Municipal Commissioner on 21.07.2010, as such, due to the said quarrel between them, the complainant and one Baktar Alam @ Khan Saheb assaulted the petitioner in morning at 8.00 A.M. on the same date i.e. on 23.09.2010 while he was going to his duty, for which the petitioner lodged Gandhi Maidan P.S. No. 423/2010 under Sections 323, 342, 427, 504 and 506/34 of the Indian Penal Code (Annexure-3 series) in which charge-sheet has been submitted on 12.11.2010 against the complainant and Baktar Alam @ Khan Saheb and both had already been granted bail by the learned Chief Judicial Magistrate, Patna on 06.10.2010.

6. It is further submitted that being a bona fide purchaser of the flat from the builder Md. Tashlim and on his complaint to the various officials including Municipal Commissioner, the builder Md. Tashlim, the complainant and Baktar Alam @ Khan Saheb were on inimical terms for which he had also lodged a sanha against them before the concerned police station on 25.09.2010 and also filed informatory petition before the Chief Judicial Magistrate, Patna bearing No. 3058/2010 on 26.09.2010 (Annexure-4 series). It is also submitted that the petitioner is being victimized by the builder Md. Tashlim and his henchmen (one of them being the complainant) and there is civil dispute between both the parties, hence, due to ulterior motive and for harassment, the petitioner has falsely been implicated as no such occurrence had ever taken place. Petitioner has filed monthly subscription register (Annexure-5) showing that he was the owner of Flat No. 101 and the complainant Ganraj was neither a purchaser nor a tenant and the whole occurrence was to terrorise the petitioner, not to raise any grievance against the builder Md. Tashlim. Hence, in view of the judgment of the Hon"ble Apex Court in the case of State of Haryana and others Vs. Bhajan Lal and others since reported in 1992 Supp (1) SCC 335 it is submitted that where a criminal proceeding is manifestly attended with mala fide or maliciously for wreaking vengeance or to spite him due to private and personal grudge

then the inherent power under Section 482 of the Code of Criminal Procedure could be exercised to prevent abuse of the process of the Court and to secure the ends of justice. He refers to paragraph 102 Clause (7) for the said proposition. He further refers to the case of Raghunath Prasad @ Raghunath Prasad Sharma & Ors. Vs. State of Bihar and Anr. since reported in 2000(1) PLJR 51 referring to paragraphs 10 and 11, which is quoted hereunder :

"10. It is apparent from the materials on record that no sooner the complainant was released from custody the accused persons came there from Bombay to Patna City on the next day and committed the alleged offence. Besides this it appears to me that Sushil Kumar Joshi, who has been mentioned in the complaint as a person who had seen the occurrence and had intervened, was withheld by the complainant and he was not examined as complainant's witness. In my opinion Sushil Kumar Joshi was the most important witness to say as to whether the occurrence had taken place or not. Withholding the witness by the complainant makes the case doubtful. No doubt, there are sufficient facts disclosed in the complaint petition disclosing the offence against the petitioners but the court, in exercise of its power under section 482 of the Code of Criminal Procedure, has to see as to whether the allegations made in the complaint petition are probable or inherently improbable. The power conferred upon the court under section 482 of the Code of Criminal Procedure is very wide and judicial process should not be an instrument of oppression or needless harassment. In my opinion, the court should be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances of the case into consideration before issuing process. In the case of State of Haryana vs. Bhajan Lal (1992 SC (1) S.C.C. 335) it was held that where the allegations made in the first information report 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 ground for proceeding against the accused the court shall not be powerless to exercise its inherent power. In the case of Punjab National Bank vs. Surendra Prasad Sinha (A.I.R. 1992 S.C. 1815) the Apex Court has observed that judicial process should not be an instrument of oppression or needless harassment. The Court should be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of private complainant as vendetta to harass the persons needlessly.

11. In view of the discussions aforesaid and in view of the legal proposition, as noticed above, in my opinion even though the complaint petition discloses an offence the complaint petition must be held to be vexatious one and the same was filed just to harass and humiliate the petitioners."

7. Learned counsel for the petitioner further submitted that the Court, in exercise of its power under Section 482 of the Cr.P.C., has to see whether the allegations made in the complaint petition are culpably probable or inherently improbable and judicial process should not merely be an instrument for harassment or oppression and is a vexatious one just to harass and humiliate the petitioner. He submits that on the date and time of occurrence the petitioner was assaulted while he was going on duty for which he lodged Gandhi Maidan P.S. Case No. 423/2010 in which the charges against the complainant and another has been found true and they have been charge-sheeted. Even otherwise, opposite party no. 2 must have probably lost interest as there was no appearance before this Court when the matter was taken up on 19.04.2017 and 03.05.2017.

8. It has been held in the case of B.S. Joshi & Ors. Vs. State of Haryana & Anr. reported in (2003) 4 SCC 675 by the Hon"ble Apex Court that the inherent powers of the High Court under Section 482 of the Cr.P.C. are wide and unfettered. It upheld the powers of the High Court under Section 482 Cr.P.C. to quash the criminal proceedings where the dispute is of private nature and to settle the scores, as the cognizance has been taken under Sections 323, 342 of the Indian Penal Code which are compoundable and under Section 320 of the Indian Penal Code. Such criminal cases have been overwhelmingly and predominantly civil flavour and stand on a different footing for the purpose of quashing, as in the present case, the wrong is basically private or personal in nature as the opposite party no. 2 has also lost interest and has not appeared before this Court. Consequently, keeping in mind the decisions of the Apex Court and this Court referred to above, allowing further proceedings to continue in connection with Complaint Case No. 2811(C)/2010 would amount to gross misuse of the process of the Court and miscarriage of justice where personal scores and personal vendetta is being settled through criminal proceedings.

9. However, learned APP for the State submitted that criminal proceedings ought not to be ordinarily quashed except in rare cases, but on being questioned about the interest of the opposite party no. 2 and his absence in this court, he had no answer.

10. In the result, the application is allowed. Order dated 28.01.2011, passed by the learned Judicial Magistrate, 1st Class, Patna in Complaint Case No. 2811(C)/2010 as well as the entire criminal proceedings in connection with the said complaint case is hereby quashed. There will be no order as to costs.