

Md. Enamuddln and ors. Vs. State of Bihar and ors.

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Court : Patna

Decided On : Jul-21-1998

Judge : M.Y. Eqbal, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 192, 200 to 203, 204 and 482; Indian Penal Code (IPC) - Sections 148, 378 and 379

Appeal No. : Cri. Misc. No. 20933 of 1997

Appellant : Md. Enamuddln and ors.

Respondent : State of Bihar and ors.

Advocate for Def. : Shiva Shankar Pd. Singh, A.P.P.

Advocate for Pet/Ap. : F.A. Khan, Adv.

Disposition : Petition allowed

Prior history : M.Y. Eqbal, J. 1. In this application filed Under Section 482 of the Code of Criminal Procedure, the petitioners have prayed for quashing the order dated 23-8-1997 passed by the Judicial Magistrate, 1st Class, Danapur in Case No. 127(c)/96 taking cognizance of the offence under Sections 148 and 379 of the Indian Penal Code against the petitioners in the aforesaid case filed by the complainant-opposite party No. 2. 2. The opposite party No. 2, Md. Sajid Hussain lodged a petition of complaint on

Judgement :

M.Y. Eqbal, J.

1. In this application filed Under Section 482 of the Code of Criminal Procedure, the petitioners have prayed for quashing the order dated 23-8-1997 passed by the Judicial Magistrate, 1st Class, Danapur in Case No. 127(c)/96 taking cognizance of the offence under Sections 148 and 379 of the Indian Penal Code against the petitioners in the aforesaid case filed by the complainant-opposite party No. 2.

2. The opposite party No. 2, Md. Sajid Hussain lodged a petition of complaint on 6-4-1996 before the Additional Chief Judicial Magistrate, Danapur alleging, inter alia, that the petitioners on 5-4-1996 removed paddy from the land. The prosecution case is that the opposite party No. 2 had grown Masur crop in the field in question and on the aforesaid date when he had gone to the field along with other persons for harvesting crop, he found that the accused persons were taken crop after cutting it from the land bearing plot Nos. 673, 671 and 669 of village Sharfuddinpur. It was further alleged that on protest by the complainant, the accused persons, who were variously armed, threatened him of assault and, therefore, complainant fled away from there raising alarm. Further allegation in the complaint petition is that the accused persons had committed the said offence out of enmity and earlier also the accused persons had committed some offence in respect of crop of the same land and a case is still pending in Court.

3. It appears that the complaint-opposite party No. 2 was examined on solemn affirmation on 8-4-1996 and thereafter during enquiry one more witness was examined. The learned Magistrate on the basis of the allegations made in the complaint petition and evidence recorded during enquiry, passed the impugned order taking cognizance of the offence Under Sections 148 and 379, I.P.C.

4. I have heard Mr. F. A. Khan, learned counsel appearing for the petitioners and the learned Additional Public Prosecutor. The learned counsel appearing for the petitioners challenged the impugned order as being illegal and wholly without jurisdiction. The learned counsel has drawn my attention to various documents, namely, the photo copy of the registered sale deeds, copy of khatian, mutation

receipts and submitted that the land in question is absolutely owned and possessed by the petitioners and it is the complainant-opposite party No. 2, who has been illegally claiming the aforesaid land. The learned counsel further submitted that the procedure adopted by the learned Court below in the enquiry is wholly illegal and the impugned order has been passed without application of judicial mind. According to the learned counsel, even on the basis of the allegations made in the complaint petition, no case against the petitioners is made out and, therefore, the order taking cognizance cannot be sustained in law.

5. On the other hand, the learned Additional Public Prosecutor submitted that there is no illegality or infirmity in the impugned order, inasmuch as, the learned Court below considered the materials came before it and after having satisfied that a prima facie case is made out, the impugned order was passed. The learned counsel further submitted that this Court in the exercise of jurisdiction under Section 482, Cr. P.C. cannot quash the order at this stage.

6. Before appreciating the rival contentions of the parties, it would be useful to look into some relevant provisions of the Code of Criminal Procedure.

Chapter XV of the Code of Criminal Procedure deals with the procedure when complaint is made to the Magistrate. This chapter consists of four sections i.e. Sections 200 to 203. Section 200 provides that a Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any. It further provides that if the complaint is made in writing the Magistrate may make over the case for enquiry or trial to another Magistrate Under Section 192, Cr. P.C. Section 201 lays down the procedure where the Magistrate, is not competent to take cognizance of the case. Section 202 confers power to the Magistrate to postpone the issue of process under certain circumstances. Section 203 provides that if the Magistrate after considering the statements of the complainant recorded on oath and of the witnesses and the result of the inquiry or investigation, come to an opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint after recording the reasons in brief for doing so.

Chapter XVI provides the procedure of commencement of proceeding before Magistrate. Section 204, Cr. P.C. confers power to the Magistrate for taking cognizance of an offence and for issuance of process. Section 204, Cr. P.C. reads as under:

204. Issue of process- (1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be-

(a) a summons case, he shall issue his summons for the attendance of the accused, or

(b) a warrant case, he shall issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under Sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under Sub-section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provision of Section 87.

7. From a bare perusal of the aforesaid provision, it is manifest that before invoking the provision of this section, Magistrate should satisfy himself that there exists sufficient ground for the issuance of process. The expression 'sufficient ground' is equivalent to 'prima facie case.' It is, therefore, clear that satisfaction of Magistrate as to existence of sufficient ground for issuance of process must be revealed in the order itself. Although, it may not be necessary for the Magistrate to pass order under this section like a judgment, nevertheless the order must indicate

proper application of mind to the material on record.

8. As noticed above, by the impugned order the learned Magistrate took cognizance of an offence Under Sections 148 and 379, IPC. The only question, therefore, falls for consideration is as to whether the allegations made in the complaint petition and the evidence of the witnesses recorded during enquiry constitute an offence under the aforesaid section. It would therefore be relevant to look into the complaint petition, a copy of which has been annexed as Annexure-1 to this application.

In the complaint petition, the place of occurrence has been mentioned as plot Nos. 673,671 and 669 of Mouza Sharfuddinpur, than Bihta, district Patna. In the body of the complaint petition, it is alleged that on the relevant date when the complainant went to the aforesaid plot for harvesting the crop, he found that the accused persons were taking the crop after cutting the same from the aforesaid plots and on protest by the complainant the accused persons threatened him. Nowhere in the complaint petition, there is averment about the nature of possession of the complainant over the said plots. No document of title or possession were filed along with complaint petition, nor during the enquiry any material evidence was produced by the complainant for the satisfaction of the Magistrate that actually it is the complainant who is in possession of the disputed plots and has grown crops. Simply there is oral statement of the complainant who was examined on solemn affirmation that he grew crops on the aforesaid plots. It is needless to say that holding a person guilty of commission of an offence Under Section 379, I.P.C., it is necessary at least to prima facie establish the three essential ingredients, namely, (i) that the plot was in possession of the complainant on the date of incident, (ii) he had sown the said crops; and (iii) the accused forcibly took away the said crops.

9. A photo copy of the entire order sheet of the complaint case has been annexed with this application from perusal of which it appears that on 6-4-1996 the complaint was lodged before the Additional Chief Judicial Magistrate, Danapur, on that date the complainant was examined on oath and then the case was made over by the Addl. Chief Judicial Magistrate to another Judicial Magistrate, Danapur, for necessary enquiry under Section 192, Cr. P.C. On 12-4-1996 the

record was received by Judicial Magistrate and the next date was fixed for examination of witness. Thereafter the case was adjourned for so many dates at the instance of the complainant. It was only on 10-1-1997 one witness was examined by the complainant and again the case was adjourned for so many dates on the prayer of the complainant. However, on 14-8-1997 the complainant filed the attendance of two witnesses for evidence, but from the order of the Magistrate, it appears that on repeated calls, no witness was examined on behalf of the complainant and the enquiry was closed fixing 23-8-1997 for order. On 23-8-1997 the learned Magistrate passed the impugned order which is under challenge in this application.

10. From perusal of the impugned order, it appears that the learned Magistrate held that from the allegations made in the complaint petition and the evidence of the witness a prima facie case is made out against the petitioner for taking cognizance of an offence under Section 378, I.P.C.

11. As noticed above, Section 204, Cr. P.C. confers power to the Magistrate to take cognizance and issue process, if in his opinion there is sufficient ground for proceeding against the accused persons. It does not appear from the impugned order that the Magistrate, in fact, has applied his mind inasmuch as the order does not reveal the satisfaction of the Magistrate about the possession of the plots and growing of crops by the complainant.

12. As stated above, the Magistrate should satisfy that there exists sufficient ground for issuance of process and it should appear from bare reading of the order. It is not necessary for the Magistrate to write a detail seeking order but at least it should appear that he has applied his mind in coming to the conclusion for issuing process. The word 'in the opinion of the Magistrate' points out the necessity of application of judicial mind to the evidence on record and rules out the possibility of either acting mechanically or arbitrarily. In my opinion, therefore, at least cases arising out of a complaint where allegation of theft or removal of crops etc. from the land is made, the Court at least prima facie satisfy himself about the possession of land, if not title, in order to constitute the offence Under Section 378, IPC. If the allegation of essential ingredients are absent then the Magistrate is not

supposed to take cognizance and issue process against the accused persons.

13. In *Debendra Nath v. State of West Bengal* reported in AIR 1972 SC 1607 : 1972 Cri LJ 1037, the Apex Court was considering the scope and purpose of the power of the Magistrate in the matter of dismissal of a complaint. The Apex Court observed as follows (para 7):

It has to be remembered that an order of dismissal of a complaint under Section 203, Criminal Procedure Code has to be made on judicially sound grounds. It can only be made where the reasons given disclose that the proceedings cannot terminate successfully in a conviction. It is true that the Magistrate is not debarred, at this stage, from going into the merits of the evidence produced by the complainant. But, the object of such consideration of the merits of the case, at this stage, could only be to determine whether there are sufficient grounds for proceeding further or not. The mere existence of some grounds which would be material in deciding whether the accused should be convicted or acquitted does not generally indicate that the case must necessarily fail. On the other hand, such grounds may indicate the need for proceeding further in order to discover the truth after a full and proper investigation. If, however, a bare perusal of a complaint or the evidence led in support of it show that essential ingredients of the offence alleged are absent or that the dispute is only of a civil nature or that there are such patent absurdities in evidence produced that it would be a waste of time to proceed further, the complaint could be properly dismissed under Section 203, Criminal Procedure Code.

14. It is now well settled that criminal law cannot be set in motion as a matter of course, before doing so the Court must record a subjective satisfaction about the existence of materials which prima facie constitute offence under the Indian Penal Code or under any other law for the time being in force.

In the case of *Punjab National Bank v. Surendra Prasad Sinha* AIR 1992 SC 1815 : 1992 Cri LJ 2916, the Apex Court observed (para 5):

It is also salutary to note that judicial process should not be an instrument of oppression or needless harassment. The complaint was laid impleading the

Chairman, the Managing Director of the Bank by name and a host of officers. There lies responsibility and duty on the Magistracy to find whether the concerned accused should be legally responsible for the offence charged for. Only on satisfying that the law casts liability or creates offence against the juristic person or the persons impleaded then only process would be issued. At that stage the Court would 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 the private complaint as vendetta to harass the persons needlessly. Vindication of majesty of justice and maintenance of law and order in the society are the prima objects of criminal justice but it would not be the means to wreak personal vengeance. Considered from any angle we find that the respondent had abused the process and laid complaint against all the appellants without any prima facie case to harass them for vendetta.

Recently, the Apex Court was considering a similar question in the case of Pepsi Food Ltd. v. Special Judicial Magistrate AIR 1998 SC 129 : 1998 Cri LJ 1. Para 28 of the judgment of the Apex Court worth to be quoted here in below :

28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable there to. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

15. Coming back to the facts of the instant case, as noticed above in the complaint petition, there is no averment about the right of the complainant to hold and possess the plots in question, nor any evidence was led to show prima facie, that the complainant is in possession. On the other hand, what I found is that the petitioners have acquired the aforesaid plots by virtue of registered sale deeds executed sometime in the year 1983-84. I further found that the names of the petitioners were duly recorded in the survey Khatian and rent receipts have been issued regarding payment of rent by the State of Bihar. On the basis of these evidences and in absence of any material evidence that should have been produced by the complainant, I have no doubt in my mind to hold that the impugned order was passed by the Magistrate mechanically and without applying his judicial mind. If the impugned order is held to be justified then it will open a Pandora Box for every person to set the Criminal Court on motion by merely lodging a complaint alleging that the complainant has grown the paddy in the land and the same has been removed by another person.

16. Having regard to the principles of law laid down by the Apex Court, I am constrained to observe that specially in cases where there is allegation of removal of crops by persons who have not grown the crop, the person complain must prima facie satisfy the Court about his possession over the land and removal of crop forcibly by another person. As noticed above, no ingredients of Section 378 has been present in the complaint petition or in the evidence of one witness, who was examined by the complainant. Even the impugned order does not reveal that the learned Magistrate has applied his mind on this aspect of the matter. For these reasons, the impugned order passed by the learned Magistrate cannot be sustained in law.

17. In the result, this application is allowed. The impugned order passed by the learned Court below is quashed. I further hold that no sufficient ground exists for issuance of process against the petitioners for the alleged commission of an offence Under Section 378, I.P.C., consequently the complaint petition is liable to be dismissed.