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Court : Patna

Decided On : Jun-25-1999

Judge : Narayan Roy, J.

Appeal No. : Criminal Misc. No. 4530 of 1992

Appellant : Arun Kumar

Respondent : State of Bihar and anr.

Disposition : Application Allowed

Judgement :

Narayan Roy, J.

1. Heard learned Counsel for the petitioner and also learned Counsel for the complainant-opposite party No. 2.
2. By this application, the petitioner has prayed for quashing the order taking cognizance dated 9-11-1991 passed by the learned Additional Chief Judicial Magistrate, Banka in Complaint Case No. C 59/90 under Sections 147, 148, 149, 302 and 436 of the Indian Penal Code.
3. The brief facts giving rise to this application are as under : The opposite party No. 2 filed a petition of complaint in the Court of the Additional Chief Judicial Magistrate, Banka stating therein, inter alia, that on 15-11-1989 at 6'O clock a mob

consisting of Muslims came towards his village armed with lethal weapons including bomb and fire-arms and they also started exploding bombs and firing from their fire-arms and seeing the mob, the villagers started fleeing away and in the meantime, the petitioner along with 25 armed police forces came there and at the behest of the petitioner, the armed forces opened fire on the villagers as a result of which his son and another villager sustained injuries and they succumbed to the injuries and the complainant learnt that for death of his son, first information report has already been lodged by the petitioner in Amarpur, Police Station.

4. On the basis of the complaint petition, the learned Magistrate after examination of the complainant on solemn affirmation made inquiry under Section 202 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') and ultimately issued processes against the petitioner and other accused-persons under Section 204 of the Code.

5. Learned Counsel appearing on behalf of the petitioner submitted that the petitioner along with a number of armed forces was deployed to maintain law and order and also public order and seeing the violent mob of Muslim as well as Hindu communities, the armed police forces opened fire to disperse the mob after obtaining due permission from the Magistrate accompanying the armed forces as a result of some persons sustained injuries.

6. Learned Counsel appearing on behalf of the petitioner further submitted that since the petitioner is alleged to have acted in purported exercise of his official duty, as complained of, the order taking cognizance is fit to be quashed as the same is barred under Section 197(2) read with Section 197(3) of the Code. Learned Counsel further submitted that there is reasonable nexus between the act complained of and discharge of the official duty and, therefore, the petitioner is entitled to get the protection of Sub-section (2) of Section 197 read with Sub-section (3) of Section 197 of the Code.

7. Sub-section (2) of Section 197 and Sub-section (3) of Section 197 of the Code run as follows:

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the armed forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government, by notification, direct that the provisions of Sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order, as may be specified therein, whenever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression 'Central Government' occurring therein, the expression 'State Government' were substituted.

8. Section 197(3) of the Code lays down that the State Government may, by notification, direct that the provisions of Sub-section (2) of the said Section shall apply to such class or category of the members of the Forces charged with the maintenance of public order, as may be specified therein, wherever they may be serving and thereupon the provisions of that sub-section will apply as if for the expression 'Central Government' occurring therein, the expression 'State Government' were substituted.

9. Learned Counsel appearing on behalf of the petitioner submitted that necessary notification, as required under Section 197(3) of the Code has already been published by the Government of Bihar in Bihar Gazette dated 24th May, 1980. In this connection, learned Counsel appearing on behalf of the petitioner has relied upon the case of Ram Swarath Yadav and Anr. v. Dr. Rajeshwar Prasad Sinha and Anr. 1991 (1) BLJ 7, to show that the necessary notification, as required under Sub-section (3) of Section 197 of the Code has been issued by the State Government.

10. According to the notification issued by the State Government, as referred to above, the provisions of Sub-section (2) of Section 197 of the Code shall apply to all the officers and men belonging to Bihar Police Force charged with the maintenance of public order who are working at any place within the State of Bihar and whose appointing authority is either the Inspector-General of Police, Bihar, the equivalent post of which now is Director-General-cum-Inspector-General or Police

of such other officer specially authorised to appoint any person to such force under the Police Act. Admittedly, the petitioner's appointing authority is Director General-cum-Inspector-General of Police. Therefore, by virtue of the aforesaid notification, one of the pre-requisites for application of the provisions of Sub-section (2) of Section 197 of the Code is attracted to the case of the petitioner as he is such member of Bihar Police Force who is charged with the maintenance of public order.

11. Now, the question as to whether officer-in-charge of the police station can be said to be member of armed force charged with the maintenance of public order, has already been set at rest by a Division Bench of Gujarat High Court in the case of Bhikhaji Vaghaji v. L.K. Barot and Ors. 1982 Cr. LJ 2014.

12. The other pre-requisite for application of Section 197(2) of the Code is that the offence complained of must be committed by such an officer of Bihar Police Force while acting or purporting to act in discharge of his official duties.

13. learned Counsel appearing on behalf of the opposite party No. 2 submitted that though the petitioner is a member of the Bihar Police Force, it cannot be said that he committed the offence while acting or purporting to act in discharge of his official duties. Learned Counsel further submitted that no magisterial order was obtained allowing the members of the armed forces to open fire upon the rioters. The learned Counsel in this context has referred to the evidence of the Magistrate who has been examined as one of the complainant's witness No. 6 in course of the enquiry under Section 202 of the Code,

14. From bare perusal of the case of the complainant, as stated above, it would appear that the offence in question was committed by the accused-persons while acting or purporting to act in discharge of their official duties. From the evidence of the complainant's witness No. 6 who is said to have been vested with the power of Magistrate and was accompanying the petitioner and patrolling armed forces, has simply stated that permission for firing was obtained by the petitioner by exercising coercion and out of fear, he granted permission to open fire. There is nothing in the evidence of this witness to suggest that the petitioner was not on official duty to maintain public order.

15. From the materials on record, in my opinion, it cannot be said that the act committed by the accused was not in discharge of their official duties. From the facts enumerated above, it appears to me that there is reasonable nexus between the act complained of and discharge of official duty, so far as the petitioner is concerned and thus, it must be held that the offence was committed while acting or purporting to act in discharge of official duties.

16. Thus, I am of the view that both the conditions precedent for application of Section 197(2) of the Code are fulfilled in the case at hand and as such, the order taking cognizance becomes wholly unwarranted and prosecution of the petitioner cannot be allowed to continue as its continuance would amount to an abuse of process of the Court,

17. In the result, this application is allowed and the order taking cognizance against the petitioner dated 9-11-91 in Complaint Case No. C 59/90 is hereby quashed.

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