

Dinesh Kumar Vs. State of Bihar and ors.

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Court : Patna

Decided On : Mar-10-1999

Judge : P.K. Sarkar, J.

Appeal No. : Criminal Misc. No. 13919 of 1993

Appellant : Dinesh Kumar

Respondent : State of Bihar and ors.

Disposition : Application Allowed

Judgement :

P.K. Sarkar, J.

1. This application under Section 482, Cr.P.C. has been filed for quashing the order dated 23.7.93 passed by Sub-Divisional Judicial Magistrate, Madhopura, in Complaint Case No. 9C/93 whereby cognizance was taken under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and summonses have been ordered to be issued against him.

2. Opposite party No. 2 Anand Mohan Mishra, Joint Registrar, Cooperative Society, Kosi and Purnea, Saharsa Division filed an official complaint against the petitioner wherein it was alleged inter-alia that in a monthly meeting of Managers held on 6.7.93 in which the petitioner was present, one Chandeshwari Ram

complained to the petitioner that he was not getting his salary for last five years. This enraged the petitioner and he told him in open meeting that he knew to move his legs, shoes, feet and arms and 'you Chamra' would be okayed within a minute. The said Chandeshwari Ram, thereafter, filed a petition on 7.7.93 before O.P. No., 2 seeking permission of the higher authorities to file a case before the appropriate Court of law. It is further alleged that O.P. No. 2 was nursing his grudge against the petitioner as earlier the petitioner filed a case for defalcation of Bank money against 56 persons including one Niranjan Mishra, Accountant who is the son-in-law of O.P. No. 2 requested the petitioner to eliminate the name of his son-in-law from the aforesaid defaulcation list but the petitioner did not do so. Due to the aforesaid facts, O.P. No. 2 was inimical to the petitioner and taking advantage of the petition filed by Chandeshwari Ram, he himself inquired into the matter and submitted a complaint petition before the Sub-Divisional Judicial Magistrate, Saharsa, against the petitioner on 21.7.93. However, the said complaint petition was returned by the Sub-Divisional Judicial Magistrate, Saharsa, with a direction to file the same at Madhepura Court and so, the complaint petition was filed before Sub-Divisional Judicial Magistrate, Madhepura, who took cognizance in the case without examining the complaint under Section 200 Cr.P.C. and issued summons against the petitioner. Hence, this petition.

3. The learned Counsel for the petitioner submitted that the aforesaid order of the Sub-Divisional Judicial Magistrate, Madhepura is illegal and deserves to be set aside. It is further submitted that the complaint is illegal in view of the fact that O.P. No. 2 does not possess any power under Section 58 of Co-operative Society Act, 1935, to enquire a original matter. Hence, any inquiry by him is without jurisdiction. Moreover, O.P. No. 2 has also been not empowered under Section 9 of the S.C.S.T. Act to investigate and prosecute the case falling under the Act. Since the petitioner is serving as Managing Director in the Co-operative Department as a public servant, he cannot be prosecuted without sanction of the State Government or his appointing authority which was not obtained. In view of the above facts, the entire order of cognizance and issue of process are irregular and illegal and deserves to be set aside.

4. No counter-affidavit has been filed on behalf of the O.P. No. 2. However, the State has been represented by the Additional Public Prosecutor.

5. The main objections taken by the petitioner against the impugned order are as follows:

(i) O.P. No. 2 was not empowered under Section 58 of Co-operative Societies Act, 1935 to enquire a criminal matter. So, he had no jurisdiction and power to enquire into the matter in question.

(ii) O.P. No. 2 had not been empowered under Section 9 of the S.C.S.T. Act to investigate and prosecute an offence covered under the said Act.

(iii) No sanction was taken in the case which was necessary due to the fact that the petitioner is a Government servant.

6. Section 58 of the Bihar Co-operative Societies Act, 1935, states as follows:

Registrar and other officers to be public servants.-The Registrar, a person exercising the powers of a Registrar, a person authorised to make an inspection under Section 34 or 36 or to hold an inquiry under Section 35, a liquidator and an arbitrator or arbitrators to whom any dispute is referred under Section 48, shall be deemed to be public servants within the meaning of Section 12 of the Indian Penal Code (45 of 1860).

It is, therefore, submitted that the petitioner is a Government servant within the meaning of Section 12 of the Indian Penal Code as per Section 58 of the aforesaid Act. Admittedly, no sanction has been taken from the State Government or the Appointing Authority to prosecute the petitioner in this case. It is further submitted that Section 9(1) of S.C.S.T. Act (The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, enumerates as follows:

Notwithstanding any thing contained in the Code or in any other provision of this Act, the State Government may, if it considers it necessary or expedient so to do.-

(a) for the prevention of and for coping with any offence under this Act, or

(b) for any case or class or group of cases under this Act, in any district or part thereof, confer, by notification in the Official Gazette, on any officer of the State Government the powers exercisable by a police officer under the Code in such district or part thereof or. as the case may be, for such case or class or group of cases, and in particular, the powers of arrest investigation and prosecution of persons before any Special Court.

Thus, it shows that a notification in the Official Gazette in this connection is necessary for prosecuting a person any Special Court under this Act. There is nothing to show that any such notification was passed in favour of the complainant.

7. I have carefully gone through the submissions of the learned Counsel for the petitioner and also perused the impugned order. It appears that the Court below treated the complaint petition as an official complaint and, therefore, took cognizance in the case mechanically without going through the aforesaid facts involving the facts/law in the case. From Annexure-1 to the petition, it appears that one Niranjana Mishra was made an accused in a case in an F.I.R. for an occurrence dated 8.2.93 reported by the petitioner. It also appears, from Annexure-3 to the petition that one Chandeshwari Ram filed a petition before the Joint Registrar, Co-operative Society, Kosi and Purnia, Saharsa Division seeking permission to file a case against the petitioner. But, it appears that without giving permission to said Chandeshwari Ram, the matter was inquired into by O.P. No. 2 himself and he filed the complaint. From Annexure-4 to the petition, it also appears that the State Government asked the O.P. No. 2 to file an explanation as to why without obtaining the view of the Department, he filed the case straight.

8. Thus, it appears that the Court below did not consider whether O.P. No. 2 was competent to file the complaint petition against the petitioner in his official capacity and whether sanction was necessary for such prosecution, etc.

9. In view of the facts stated above, I find that the Court below should have considered the aforesaid facts before taking cognizance against the petitioner.

10. Accordingly, this application is allowed and the impugned order dated 23.7.93 passed in Complaint Case No. 9 C/93 is hereby quashed. The Court below is directed to consider the case afresh in the light of the observations made above. Both the parties should appear before the Court below and place their respective submissions. The Court below after considering all the facts and hearing the matter afresh, shall pass an order in accordance with law.

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