

Ghulam Subhani Vs. State of Bihar and ors.

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Court : Jharkhand

Decided On : Jan-25-2005

Reported in : 2005CriLJ3067; [2006(1)JCR147(Jhr)]

Judge : Hari Shankar Prasad, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 188; Code of Criminal Procedure (CrPC) , 1974 - Sections 144, 468(1) and 482

Appeal No. : Cr. Misc. No. 4316 of 1998 (R)

Appellant : Ghulam Subhani

Respondent : State of Bihar and ors.

Advocate for Def. : N.K. Sahani, Adv.

Advocate for Pet/Ap. : M.K. Laik, Adv.

Disposition : Application allowed

Judgement :

ORDER

Hari Shankar Prasad, J.

1. This quashing application under Section 482 Cr. P. C. is directed against the order dated 1-4-1998 passed in Complaint case No. G., 52/98, whereby and

whereunder the learned CJM took cognizance of the offence under Section 188, IPC.

2. Facts briefly stated are that a proceeding under Section 144 Cr. P. C. was initiated on the basis of an application filed by the opposite party No. 2 on the land in plot No. 62 of khata No. 24 of village Korra, district Hazaribagh and later on by amendment plot Nos. 61, 63 and 64 were also included in the proceeding. It was alleged on behalf of the opposite party No. 2 that on 26-10-1996 the petitioner, on the basis of fraudulent document, had started demarcating the land in plot No. 62, which necessitated initiation of a proceeding under Section 144 Cr. P. C. In the said application there was no allegation that there is any apprehension of breach of peace, which is the essential ingredient of drawing of proceeding under Section 144 Cr. P. C. However, a proceeding under Section 144 Cr. P. C. was drawn up in Misc. Case No. 161/96 in the Court of SDM, Hazaribagh. It is stated that notice was served on the petitioner but it is said on behalf of the petitioner that no notice was actually served on him but it was hung on the door of the petitioner and on 5-11-1996 second party filed a petition in the Court of SDM Sadar, Hazaribagh that there was a violation of the order under Section 144 Cr. P. C. even though petitioner had knowledge about the initiation of the proceeding under Section 144 Cr. P. C. because he had refused to receive the notice, which was later on hung on the door of his house. A show cause notice was issued. Petitioner appeared and took up the plea that no notice was served on him. The Anchal Adhikari was deputed by SDM to enquire into the matter and on the basis of report of Anchal Adhikari proceeding under Section 188 IPC was initiated on 23-11-96. The petitioner appeared in the proceeding and took up a plea that no notice was actually served on him and, therefore, he had no knowledge and, therefore, in the facts and circumstances he has not committed any violation of the order and after initiation of the proceeding through the order dated 23-11-96, the SDM by order dated 23-12-96 dropped the proceeding under Section 144 Cr. P. C.

3. The contention of the learned counsel for the petitioner is that even after dropping of the proceeding under Section 144 Cr. P. C. on 23-12-96, a proceeding under Section 188 IPC was continued and has not been dropped, although on 25-2-97 the SDM appointed a pleader commissioner and against which order the

petitioner preferred a Cr. Misc No. 2449/97 (R) and this Court set aside the order appointing the pleader commissioner but directed the petitioner to file a show cause before the learned Court below and the learned Magistrate was directed to hear the parties and after going through the material on record will pass an appropriate order in accordance with law. Thereafter the petitioner appeared and filed a show cause and after hearing the parties on 24-3-98 the SDM passed an order for filing complaint case and a complaint was filed and on 1-4-98 the learned CJM took cognizance of the offence under Section 188 IPC for violation of the order of the proceeding under Section 144 Cr. P. C. made on 25-11-96. It is pointed out that violation is said to have been committed on 25-11-96 but cognizance in the case has been taken on 1-4-98 more than a year after alleged violation and punishment provided under Section 188 IPC is one month or a fine of Rs. 200/- and under Section 468(1) Cr. P. C. there is a provision for fine and period of limitation is six months and when there is a provision for substantive punishment of imprisonment of one year then period of limitation is one year and in the instant case punishment provided for only one month or fine of Rs. 200/-. It was further pointed out that the case has been filed by a Magistrate, whose order has not been violated and it is settled principle that the Court, whose order has been violated may file a complaint and not other person. Another point that was raised by the learned counsel for the petitioner is that when proceeding under Section 144 Cr. P. C. was dropped as not maintainable, the magistrate has no jurisdiction to pass order dated 25-2-97 when proceeding under Section 144 Cr. P. C. was dropped.

4. On the other hand learned counsel for the opposite parties submitted that cognizance has properly been taken after due initiation of a proceeding under Section 188 IPC and the order of cognizance does not require any interference.

5. After hearing the submissions of the parties and going through the position of law, I am of the view that order of cognizance dated 1-4-98 is not sustainable in the eye of law due to procedural mistakes as well as case not being filed by the Magistrate, whose order has been violated and further that violation is said to have been taken place in November, 96 and case has been filed on 24-3-98 after more than a year from the date of violation of the order.

6. In that view of the matter, this quashing application is allowed and the impugned order dated 1-4-1998 is quashed.

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