

Satish Singh, and anr. Vs. State of Bihar, and anr.

Satish Singh, and anr. Vs. State of Bihar, and anr.

SooperKanoon Citation : sooperkanoon.com/915404

Court : Patna

Decided On : Jul-12-2010

Judge : Rakesh Kumar, J.

Acts : Code of Criminal Procedure (CrPC) - Section 482, 156 (3), 144, 145, 107, 116(3); Indian Penal Code (IPC) - Sections 120B, 420, 467, 468; Indian Registration Act - Sections 81, 82

Appeal No. : CRIMINAL MISCELLANEOUS No.9826 OF 1999

Appellant : Satish Singh, and anr.

Respondent : State of Bihar, and anr.

Advocate for Def. : Sri Jharkhandi Upadhaya, Adv.

Advocate for Pet/Ap. : Sri Bhola Prasad, Adv.

Judgement :

1. Two petitioners, while invoking inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, have prayed for quashing of an order, which was passed long back on 19.3.1999 by Sri R.S. Singh, learned Judicial Magistrate, 1st Class, Katihar in Complaint Case No.355 of 1998. By the said order, the learned Magistrate has taken cognizance of offences under Sections 120B and 420 of the Indian Penal Code against the petitioners.

2. Short fact of the case is that Opp.Party no.2 initially filed a complaint, vide Complaint Case No.542 of 1996 on 18.6.1996 alleging therein that in between 31.1.1995 and 9.1.1996 , accused persons had committed offences relating to a land pertaining to Khata No.462 , Khesra No.1275 , measuring an area of 8 decimals . It was alleged that the petitioners in connivance with others had got a false partition deed prepared and thereafter tried to dispossess the complainant. It was alleged by the complainant that they had got some land transferred from one Anup Kaur and Jamabandi No.994 was created in the complainant's favour. On the allegation of preparing a false partition deed, the aforesaid complaint was filed for the offences under Sections 120B, 420, 467 and 468 of the Indian Penal Code. The said complaint was referred to the police for its registration and investigation under Section 156 (3) of the Code of Criminal Procedure and accordingly an F.I.R. vide Barari P.S. Case No.80 of 1996 was registered for the offences under Sections 420,467,468 and 120B of the Indian Penal Code and 81 and 82 of the Indian Registration Act. The police during the investigation found that the land dispute in between the complainant and petitioners was going on. It was found that proceedings under Sections 144 and 145 as well as 107 Cr.P.C. was pending in between the complainant and the petitioners and, as such, after investigation, the police considered that it was not a criminal case but it was a civil dispute and, accordingly, final form was submitted on 10.9.1996.

3. Before filing of the final report, the complainant filed a protest petition, which was subsequently treated as Complaint petition vide Complaint Case No.355 of 1998. Thereafter, the complainant was examined on S.A. and four witnesses were examined as enquiry witnesses and by order dated 19.3.1999 , the learned Magistrate was satisfied that prima facie the case under Sections 120(B) and 420 of the Indian Penal Code was made out and directed for issuance of process against accused persons ,i.e. the petitioners.

4. Aggrieved with the order of cognizance, both the petitioners approached this Court by filing the present petition and by order dated 21.2.2000 while admitting the present case, this Court had directed that pending disposal further proceeding in C.A. No.355 of 1998 pending in the court of J.M. 1st Class, Katihar shall remain stayed and the order of stay is still continuing.

5. Sri Bhola Prasad, learned counsel appearing on behalf of the petitioners submits that the order of cognizance as well as the proceeding in Complaint Case No.355 of 1998 is liable to be set aside solely on the ground that the complainant had initiated the proceeding maliciously and with a view to put a pressure on the petitioners, so that they may dissuade from taking possession over the land in question. It was submitted that long back a partition deed was prepared and since thereafter the petitioners were continuing in possession over the land in question. However, subsequently, the complainant tried to dispossess the petitioners from the land and thereafter a proceeding under Section 144 Cr.P.C. was initiated, which was subsequently converted into a proceeding under Section 145 Cr.P.C. and in that proceeding possession of the petitioner was declared by the concerned Magistrate. It was further submitted that a proceeding under Sections 107/116 (3) of the Code of Criminal Procedure was earlier also initiated in between the parties. It was further argued that though the complainant in a cryptic manner had got the land in question mutated in his name , but subsequently it was finally set at rest by the Dy. Collector Land Reforms in Mutation Appeal No.91 of 1995-96 by the order dated 20.09.1996 . The petitioners have brought on record the order dated 20.9.1996 passed in Mutation Appeal No.91/1995-96 as Annexure-3 to the present petition. While referring to the said order, it was submitted that even Mutation has been finally settled in favour of the petitioners. It was further argued that the malicious prosecution by the complainant is further proved from the fact that after the order of cognizance, while the petitioners approached this Court and notices were issued to Opp.Party no.2, he never preferred to appear before this Court. In this case the step for substituted service of notice was taken by the petitioners and even then he has not appeared in the present case. Accordingly, it has been submitted that on the ground of malicious prosecution, the order of cognizance and entire proceeding in Complaint Case No.355 of 1998 is liable to be set aside. It was submitted that the complaint, which was initially filed , was thoroughly investigated by the police and after registering the F.I.R. vide Barari P.S. Case No.80 of 1996 , an statutory Investigating Agency found during the investigation that it was a civil dispute and thereafter a protest petition was filed by the complainant and said protest petition was subsequently treated as complaint petition .It was numbered as Complaint Case No.355 of 1998 and thereafter the

impugned order has been passed.

6. Sri Jharkhandi Upadhaya, learned Addl.Public Prosecutor appearing on behalf of the State has vehemently opposed the prayer of the petitioners. Learned Addl.Public Prosecutor while referring several Judgments of the Apex Court, has argued that on the mere ground of pendency of a civil litigation, criminal prosecution cannot be set aside. It was further submitted that the order of cognizance has been passed in the present case on the material brought during the enquiry and said material was sufficient to proceed against the petitioners and, as such, the learned Magistrate has rightly passed order of cognizance and the petition is liable to be rejected.

7. Besides hearing learned counsel for the petitioners as well as learned counsel appearing on behalf of the State, I have perused the materials available on record .In this case lower court record has been received.I have also perused the lower court record. After going through the entire record, the Court is satisfied that the present complaint i.e. Complaint Case No.355 of 1999 was not initiated with fair and honest intention. The Court is satisfied that the present proceeding was initiated with a view to put pressure on the petitioners, so that they may not pursue their possession over the land in question. The fact also remains that the entire material was thoroughly examined by the police and thereafter final report was submitted indicating therein that it was a civil dispute. The police submitted final form. I have also perused the order passed in the Mutation Appeal, which was passed in favour of the petitioners.

8. In view of the facts and circumstances as indicated above, the Court is satisfied that allowing the prosecution in the present case will amount to allowing the abuse of the process of the Court and with a view to prevent abuse of the process, order of cognizance dated 19.3.1999 in C.A.No.355 1998 is hereby set aside and the petition stands allowed.