

Kameshwar Singh, and ors. Vs. State of Bihar, and anr.

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Court : Patna

Decided On : Jul-20-2010

Judge : Anjana Prakash, J.

Acts : Indian Penal Code (IPC) - Sections 323, 504, 379 read with 34, 482

Appeal No. : CRIMINAL MISCELLANIOUS No. 16484 OF 2004

Appellant : Kameshwar Singh, and ors.

Respondent : State of Bihar, and anr.

Advocate for Def. : Amarendra Prasad; Mr. Ashok Kumar Sinha, Adv.

Advocate for Pet/Ap. : Mr. Amar Nath Singh Adv.

Judgement :

1. The petitioners seek quashing of the entire proceedings of complaint case no. 55 (C) of 2004 pending before the Judicial Magistrate Ist Class, Bihar Shariff including the order dated 12.3.2004 by which he has taken cognizance in the matter for offences under Sections 323, 504, 379/34 I.P.C. as well as the order dated 31.3.2004 passed by the Sessions Judge, Nalanda in Cr. Rev. No. 113/2004 by which he has dismissed the application of the petitioners filed against order taking cognizance.

2. On 23.9.2005 this court had issued notice to the opposite party no. 2, considering the statement of the complainant on solemn affirmation that there was

some land dispute between the parties and stayed further proceedings in the court below. Thereafter, on 4.1.2006 the application was admitted for hearing. Today both the parties are present in the court and advance their rival submissions.

3. The case of the complainant is that on 22.01.2004 at 10 a.m. she was informed that a mango tree had been cut by the accused persons at which she rushed to the place of occurrence and saw the pieces of the tree being loaded in the tractor by accused persons and also her husband being assaulted. After due inquiry in the matter the court took cognizance as stated above.

4. The contention of the petitioner is that the land on which alleged tree stood was in possession of the petitioners since long and because the mango tree had dried up a permission was sought by the petitioners from the Mukhiya to cut the same and thereafter it was cut on 6.1.2004 after due permission for cutting and transporting the same. The further submission is that a Title Suit no. 24 of 2004 had been filed by the complainant for declaration of title and other relief with respect to plot on which allegedly tree had stood. Which reveals that there was dispute between the parties with regard to ownership of the land on which the mango tree had stood the same was admitted by the complainant in her statement given on solemn affirmation. The further submission is that in fact the present complaint is nothing but a malicious prosecution on account of the pending land dispute. On the other hand the counsel for the opposite party no. 2 submits that this application filed under Section 482 is barred since the petitioners have already availed the forum of revision which stood dismissed by the Sessions Judge. The further submission is that in the facts of the case an offence is made out against the petitioners and therefore this court at stage of 482 should not look into intricacies of the matter.

5. There is no doubt that a second revision is barred in law but on various occasions this proposition has been tested and the matter is settled that if it is brought to the notice of the court that a certain illegality has been committed this technicality would not come in the way of dispensing justice. The second submission that from the facts of the case it appears that an offence is made out against the accused persons and therefore cognizance should not be quashed at

any rate, is not acceptable to this court. The reason is that the entire concept of having a hierarchy of courts with wider powers is to ensure that no injustice is caused to anyone. When it is brought to the notice of this court that in fact there was land dispute between the parties with regard to the same piece of land and the ownership was in dispute, which is admitted even by the complainant in her statement given under solemn affirmation the situation demands that this court should consider the complaint in the background of the litigations pending between the parties.

6. In view of such, I am inclined to quash the entire proceedings of complaint case no. 55 (C) of 2004 pending before the Judicial Magistrate Ist Class, Bihar Shariff including the order dated 12.3.2004 by which he has taken cognizance.

7. Application is stands allowed.

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