

Sk. Baksullah, and ors. Vs. State of Bihar, and anr.

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Court : Patna

Decided On : Aug-09-2010

Judge : Rakesh Kumar, J.

Acts : Code of Criminal Procedure (CrPC) - Section 482, 145; Indian Penal Code (IPC) - Section 143, 379

Appeal No. : CRIMINAL MISCELLANEOUS No.3652 OF 2001

Appellant : Sk. Baksullah, and ors.

Respondent : State of Bihar, and anr.

Advocate for Def. : Mrs. Indu Bala Pandey, A

Advocate for Pet/Ap. : Mr. Om Prakash, Adv.

Judgement :

1. Four petitioners, while invoking inherent jurisdiction of this court under section 482 of the Code of Criminal Procedure, have prayed for quashing of an order dated 30.11.2000 passed in Tr. No.1150 of 2000 by learned Sub. Divisional Judicial Magistrate, Bagaha, West Champaran. By the said order, the learned Magistrate has taken cognizance of the offences under sections 143 and 379 of the Indian Penal Code and summoned the petitioners to face trial.

2. Aggrieved with the order of cognizance, the petitioners have approached this court by filing the present petition. On 4.2.2002, while issuing notice to opposite

party no.2, this court had directed that until further orders, further proceedings in the court below shall remain stayed and order of stay is still continuing.

3. Despite the fact that opposite party no.2 has entered appearance, at the time of hearing none has appeared on his behalf.

4. Short fact of the case is that opposite party no.2 filed a written complaint on 12.12.1993 before the Officer Incharge, Chautarwa (Bhairoganj) police station alleging therein that on 3.12.1993 at 2 P.M. the accused persons had taken away the harvested paddy crops of the informant from his field. It was alleged that in the said occurrence the informant had suffered a loss of about Rs.3,000/-. It was disclosed in the written report that at the time of occurrence he was away but he was subsequently informed by several witnesses regarding the said occurrence. After registering the first information report, the police investigated the same and, thereafter, submitted final report. During investigation the investigating officer found that the land from where the paddy crops were looted was in possession of the petitioners. Final report was submitted on 6.4.1994. Before filing of the final report on 23.12.1993 itself the informant had filed a protest petition. After submission of the final report, the protest petition was treated as complaint petition and the learned Magistrate conducted an enquiry and during enquiry four witnesses were examined on behalf of the complainant. Thereafter, by the impugned order, the learned Magistrate took cognizance of the offences under sections 143 and 379 of the Indian Penal Code.

5. Mr. Om Prakash, learned counsel appearing on behalf of the petitioners, while challenging the order of cognizance, submits that over the land in question the complainant was raising unnecessary dispute since long and due to that reason earlier a proceeding under section 145 of the Code of Criminal Procedure was initiated on the petition filed by the petitioner no.1. Subsequently, the learned Magistrate without any reason abruptly dropped the said proceeding on 22.11.1993. It was submitted by Mr. Om Prakash, learned counsel appearing on the behalf of the petitioners, that against the order of dropping of the proceeding petitioner no.1 had preferred a revision which was numbered as Cr.Revision No.3 of 1994 and same was finally allowed on 7th December, 1994 and the matter was

remitted back to the Sub.Divisional Judicial Magistrate, Bagaha for its disposal in accordance with law. Learned counsel for the petitioners has referred to annexure-5 to the petition which is a photo copy of the certified copy of the order dated 7th December, 1994 passed in Cr.Revision No.3 of 1994. It was further submitted by learned counsel for the petitioners that, in the present case, it was alleged that occurrence had taken place on 3.12.1993 and even for the said occurrence, the complainant had filed a written report before the police on 12.12.1993 i.e. about nine days after the alleged occurrence and thereafter a first information report was registered by the police. It was submitted by learned counsel for the petitioners that since the complainant had filed a complete false case against the petitioners, the investigating officer did not submit charge-sheet against any of the petitioners. During investigation it was categorically found that the land in question was in possession of the petitioners. However, after submission of the final form, the learned Magistrate converted the protest petition as complaint petition and without any reliable materials; the learned Magistrate has passed the impugned order of cognizance that too on 30.11.2000. It was submitted that neither the complainant nor the learned Magistrate has indicated anything as to what was the reason for taking cognizance of the offence in the case in the month of November, 2000 whereas it was alleged in the complaint petition that occurrence had taken place on 3.12.1993. No reason was assigned by the learned Magistrate for taking cognizance at such a belated stage. On the aforesaid ground, learned counsel for the petitioners has prayed for quashing of the order of cognizance and the entire criminal proceeding in Tr. No.1150 of 2000.

6. Mrs. Indu Bala Pandey, learned Addl. Public Prosecutor appearing on behalf of the State has half heartedly opposed the prayer of the petitioner. She admits that during investigation the police had found possession of the petitioners over the land in question.

7. Besides hearing learned counsel for the petitioners and the State, I have also perused the materials available on the record. Annexure-5 to the petition i.e. judgment passed by learned Sessions Judge, West Champaran, Bettiah in Cr.Revision No.3 of 1994, makes it clear that the petitioners were having possession over the land in question and a proceeding under section 145 of the

Code of Criminal Procedure was initiated prior to the alleged date of occurrence by one of the petitioners. Of course, the proceeding was dropped on 22.11.1993 by the Sub. Divisional Judicial Magistrate, Bagaha, West Champaran, the said order was set aside by the revisional court and the matter was remitted back to the court below. The aforesaid fact makes it clear that at least dispute for the land in question was going on in between the petitioners and the complainant. In such a situation, the police had rightly submitted final form and, as such, there was no requirement to proceed with the complaint petition. However, the learned Magistrate conducted an enquiry and, thereafter, passed the impugned order.

8. In view of the materials available on the record as well as the arguments advanced by learned counsel for the petitioners and also keeping in view the fact that the alleged occurrence had taken place long back in the year 1993, the court is of the opinion that it is a fit case for exercising inherent jurisdiction in favour of the petitioners and, accordingly, order of cognizance dated 30.11.2000 passed by Sub.Divisional Judicial Magistrate, Bagaha, West Champran is hereby set aside and the petition stands allowed.

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