

Rameshwar Prasad, and ors. Vs. State of Bihar, and anr.

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Court : Patna

Decided On : Aug-11-2010

Judge : Rakesh Kumar, J.

Acts : Code of Criminal Procedure (CrPC) - Section 482; Indian Penal Code (IPC) - Sections 323, 427, 379, 147, 148, 149, 307

Appeal No. : CRIMINAL MISCELLANEOUS No.30293 OF 2000

Appellant : Rameshwar Prasad, and ors.

Respondent : State of Bihar, and anr.

Advocate for Def. : Mr. A.M.P. Mehta, Adv.

Advocate for Pet/Ap. : M/S Y.V. Giri; Raju Giri; S.K. Giri; P. Kumar, Advs.

Judgement :

1. Three petitioners, who are Excise Officials are before this Court, while invoking inherent jurisdiction under Section 482 of the Code of Criminal Procedure with a prayer to quash the order dated 8.9.2000 passed by Shri R.C. Singh, Judicial Magistrate, Ist Class, Gopalganj in Complaint Case No.1006 of 1999/Trial No.1060 of 2000. By the said order, the learned Magistrate has taken cognizance of offence under Sections 323, 427 and 379 of the Indian Penal Code.

2. Short fact of the case is that opposite party no.2, who was running a shop of tea and sweets, filed a complaint, which was registered as Complaint Case No.1006

of 1999 in the court of Chief Judicial Magistrate, Gopalganj alleging therein that on the date of occurrence i.e. on 18.6.1999, in the evening at about 5.30 P.M., the petitioners and other police officials stopped on the shop of the complainant, they consumed sweets and also taken tea and thereafter, on demand, they refused to make any payment and further allegation is that the complainant was assaulted by the accused persons and tea and sweets shop of the complainant was also ransacked. On aforesaid allegation, complaint was filed and at the enquiry stage, witnesses were examined in support of the complainant and thereafter, by the impugned order, the learned Magistrate has taken cognizance of offence under Sections 323, 427 and 379 of the Indian Penal Code.

3. Aggrieved with the order of cognizance, the petitioners approached this Court by filing the present petition, which was admitted on 5.12.2001. While admitting, notice was directed to be issued to opposite party no.2 and further it was directed that during the pendency of this application, further proceedings in the court below shall remain stayed and order of stay is still continuing. Despite valid service of notice on opposite party no.2, he has not chosen to appear in the case either personally or through counsel.

4. Shri Y.V. Giri, learned Senior Counsel appearing on behalf of the petitioners, while challenging the order of cognizance as well as initiation of entire criminal proceeding in Complaint Case No.1006 of 1999, submits that same is liable to be set aside solely on the ground of malicious prosecution. It was submitted that petitioners were officials of the Excise Department and while discharging their official duty, they had conducted raid in the shop of maternal aunt of complainant on an allegation of commission of offences under the Excise Act. During the search, illegal liquors were also seized and while the petitioners apprehended one of the accused and they were on way, they were intercepted by several persons, they were assaulted and they also got the accused forcefully released. On that allegation, it was submitted by Shri Giri, an F.I.R. vide Mohammadpur P.S. Case No.55 of 1999 was registered on 18.6.1999 for the offence under Sections 147, 148, 149, 323, 307 of the Indian Penal Code against several accused persons including the maternal aunt of the complainant, namely, Sunaina Devi and father of the complainant was also made accused in that case. It was submitted that after

registering the F.I.R., police thoroughly investigated the same and thereafter, on 30.11.2009, charge sheet was submitted against accused persons including father of the complainant and said Sunaina Devi, who was maternal aunt of the complainant. It was submitted that only with a view to put pressure on the petitioners and official of the Excise Department to dissuade in pursuing the criminal case in Mohammadpur P.S. Case No.55 of 1999, in a designed manner, the present complaint petition was filed and some of the persons also falsely supported the stand of the complainant. Accordingly, it has been submitted that the present case was filed maliciously and same is liable to be set aside.

5. Shri A.M.P. Mehta learned Additional Public Prosecutor appearing on behalf of the State, in absence of opposite party no.2, has opposed the prayer of the petitioners.

6. Besides hearing learned counsel for the petitioners and State, I have also perused the materials available on record. The F.I.R. i.e. Mohammadpur P.S. Case No.55 of 1999 was registered on 18.6.1999 itself and after the F.I.R. was lodged, on the next day i.e. on 19.6.1999, the present complaint was filed by the complainant disclosing therein that occurrence in the complaint petition had taken place on 18.6.1999. It is not in dispute that tea and sweets shop of the complainant was situated within the locality, where raid by petitioners, was conducted and shop of the maternal aunt of the complainant was searched by the petitioners and thereafter, an F.I.R. vide Mohammadpur P.S. Case No.55 of 1999 was registered. After investigation, charge sheet was also submitted, which has been brought on record vide Annexure-4 to the present petition at pages 30 to 36.

7. In view of the fact that petitioners were officials of the Excise Department and they had visited the place with a view to conduct raid and raid was conducted and they were even assaulted by the people of same locality including father of the complainant, the court is of the view that present complaint was got filed by the father of the complainant with a view to create defence in the police case i.e. Mohammadpur P.S. Case No.55 of 1999. Accordingly, the court is convinced that prosecution in the complaint case i.e. Complaint Case No.1006 of 1999 was initiated maliciously and on the ground of malicious prosecution, the court is

persuaded to exercise inherent jurisdiction in favour of the petitioners.

8. Accordingly, order of cognizance dated 8.9.2000 passed by Shri R.C. Singh, Judicial Magistrate, Ist Class, Gopalganj in Complaint Case No.16 of 1999/Trial No.1060 of 2000 is hereby set aside and petition stands allowed.

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