

Rakesh Narayan, and ors. Vs. State of Bihar, and anr.

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Court : Patna

Decided On : Aug-26-2010

Judge : Rakesh Kumar, J.

Acts : Indian Penal Code (IPC) - Sections 457, 380 read with 34, 323, 504; Code of Criminal Procedure (CrPC) - Section 482

Appeal No. : CRIMINAL MISCELLANEOUS No.9496 OF 2002

Appellant : Rakesh Narayan, and ors.

Respondent : State of Bihar, and anr.

Advocate for Def. : ri Shivesh Chandra Mishra, Adv.

Advocate for Pet/Ap. : S/Sri Anil Kumar Sinha; Rajesh Kumar Verma; Sri S.N.P.Sinha, Adv.

Judgement :

1. The present application was filed initially by four petitioners against the order dated 13.12.2001 passed by Sri S.K.Singh, Judicial Magistrate, 1st Class, Samastipur in Complaint Case No.1065 of 2001. Initially, the petitioners had challenged the order of issuance of warrant of arrest against the petitioners. Subsequently, an Interlocutory Application vide I.A.No.776 of 2002 was filed with a prayer to amend the prayer in petition to the extent of quashing of proceeding in Complaint Case No.1065 C of 2001 along with quashing of order of cognizance dated 17.10.2001. The case was pending before Sri S.K.Singh, Judicial

Magistrate, 1st Class, Samastipur. The said Interlocutory Application was allowed by an order dated 15.3.2004. At the time of admission, by order dated 3.10.2002, the petition in respect of petitioner nos.1, 3 and 4 was rejected by this Court. It has been submitted by Sri Anil Kumar, learned counsel appearing on behalf of petitioners that against the order dated 3.10.2002, no appeal has been preferred. So, now the petition has been confined in respect of petitioner no.2, namely, Sanjeev Kumar Choudhary @ Sanjiv Chowdhary only.

2. Short fact of the case is that Opp.Party no.2 filed a complaint in the court of the learned Chief Judicial Magistrate, Samastipur, which was numbered as Complaint Case No.1065C of 2001, arraying four persons including the petitioner and other 15-20 unknown persons as accused in the complaint petition. It was alleged that on 8.10.2001 in the night at about 9.30 P.M. all the named accused persons and other 15-20 unknown persons by way of breaking the lock of the complainant's godown entered inside and forcibly took away Cement and Cartoons of Hardware from the godown and loaded on a truck. It was further alleged that while the complainant wanted to stop the accused persons for committing crime, accused no.1, namely, Rakesh Kumar, accused no.3, namely, Ashok Kumar and accused no.4, namely, Dinesh Gupta started abusing and assaulting the complainant and thereafter they took away Cement and Hardware articles after loading the same on a truck. The complainant suffered a loss of Rs.25000/-. After filing of the complaint petition, the complainant was examined on S.A. and in support of the complaint case, witnesses were also examined as enquiry witness and thereafter by the impugned order i.e. order dated 13.12.2001 the learned Magistrate took cognizance of offences under Sections 457,380/34,323 and 504 of the Indian Penal Code and directed for issuance of process against the accused persons.

3. Aggrieved with the order of cognizance dated 13.12.2001, whereby non-bailable warrants of arrest was issued the petitioners approached this Court for quashing of order of cognizance dated 13.12.2001 and also for quashing of complaint petition.

4. Sri Anil Kumar Sinha, learned counsel appearing on behalf of the petitioners submits that from the contents of complaint petition itself, no offence is made out

and on this sole ground, it was argued that the order of cognizance is liable to be set aside. Learned counsel for the petitioners has referred and placed the averment made in last portion of the first paragraph of the complaint petition, wherein it was asserted that while the complainant tried to stop the accused persons from committing the crime , accused nos.1 , 3 and 4 (not the petitioner Sanjeev Kr.Choudhary @ Sanjiv Chowdhary) started abusing and assaulting the complainant and loaded the articles on the truck. Only on this assertion made in the complaint petition, it was argued by Sri Anil Kumar Sinha, learned counsel for the petitioners that no case is made out against the petitioner. In support of his stand, learned counsel for the petitioner has referred to a Judgment of Hon'ble Supreme Court reported in (2009) 10 SCC 184; Neelu Chopra and another v. Bharti. He has specifically referred to paragraph nos. 9 and 12 of the said Judgment, which are as follows:

"9. In order to lodge a proper complaint, mere mention of the sections and the language of those sections is not the be all and end all of the matter. What is required to be brought to the notice of the court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence."

"12.This is apart from the fact that despite service of notice, the complainant neither appeared before this Court nor engaged any counsel to represent her. Under the circumstances, we are of the opinion that the judgment of the High Court deserves to be set aside. It is, accordingly, set aside and the order of the learned Magistrate taking cognizance is quashed. The complaint is quashed under Section 482 Cr.P.C."

5. On the ground of disclosure of no offence in the complaint petition as well as in the statement of the complainant recorded on S.A. it has been prayed to quash the order of cognizance and entire criminal proceeding in Complaint Case No.1065C of 2001 pending in the court of the learned Judicial Magistrate, 1st Class, Samastipur.

6. Sri S.N.P.Sinha, learned Senior Counsel appearing on behalf of Opp.Party no.2 has vehemently opposed the prayer of the petitioner. It was submitted by the

learned Senior Counsel for Opp.Party no.2 that the complaint petition itself categorically discloses that all the named accused persons and other 15-20 unknown persons had committed the crime and there is specific allegation that accused persons named in the complaint petition had broken the lock of the godown of the complainant, they forcibly took away the materials from the godown and, as such, it was submitted that from the contents of the complaint petition, specific case is made out against the accused persons including the petitioner no.2, Sajeev Kumar Choudhary @ Sanjiv Chowdhary. It was further submitted that this is not the stage to examine the materials minutely. It was submitted that at the stage of exercising power under Section 482 of the Code of Criminal Procedure, this Court may not interfere with the order of cognizance. It was argued that the power under Section 482 of the Code of Criminal Procedure is to be exercised in exceptional and rarest of rare cases in view of law settled by the Apex Court. On the aforesaid ground, it was submitted that whatever ground has been taken by the petitioner in the present case can be looked into at the appropriate stage before the trial court and, as such, it was prayed to reject the present petition.

7. Sri Shivesh Chandra Mishra learned Addl.Public Prosecutor appearing on behalf of the State submits that the complaint petition itself discloses commission of offence against the petitioners.

8. Besides hearing learned counsel for the parties, I have also minutely examined the contents of the complaint petition as well as the statement of the complainant recorded on S.A. In the first paragraph of the complaint petition, it has been categorically stated that named accused persons in the complaint petition and other 15-20 accused persons had committed the crime. In column of accused persons, name of petitioner Sanjeev Kumar Choudhary@ Sanjiv Chowdhary has been mentioned as accused no.2. Since only point was raised by the learned counsel for the petitioners that no offence is made out against petitioner no.2, namely, Sanjeev Kumar Choudhary @ Sanjiv Chowdhary, I have examined the materials available on record. The Court is satisfied that on the basis of materials available on record, the learned Magistrate has rightly passed the order of cognizance and he has committed no error. So far Neelu Chopra's case (Supra), on which learned counsel for the petitioners has relied upon is concerned, I am of

the view that the said proposition is not applicable in the facts and circumstances of the present case. In the present case, there is specific averment of commission of offences by the accused persons including petitioner no.2 and, as such, no benefit can be given to the petitioner Sanjeev Kumar Choudhary @ Sanjiv Chowdhary in view of Neelu Chopra's case (supra).

9. In view of the facts and circumstances of the case, I am of the opinion that the learned Magistrate has rightly passed the order of cognizance and the petitioner has not made out an exceptional case warranting exercise of power under Section 482 of the Code of Criminal Procedure in his favour. Accordingly, the petition stands rejected.

10. In view of rejection of this petition, interim order of stay stands automatically vacated.

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