

Dularchand Prasad, and anr. Vs. State of Bihar, and anr.

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Court : Patna

Decided On : Sep-07-2010

Judge : Rakesh Kumar, J.

Acts : Code of Criminal Procedure (CrPC) - Section 482; Indian Penal Code (IPC)
- Sections 147,341, 323, 420, 409, 324, 504, 384

Appeal No. : CRIMINAL MISCELLANEOUS No.12855 OF 2003

Appellant : Dularchand Prasad, and anr.

Respondent : State of Bihar, and anr.

Advocate for Def. : Sri Shivesh Chandra Mishra, 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 dated 21.09.2001 passed by Sri S.Kumar, Judicial Magistrate, 1st Class, Banka in Complaint Case No.465 of 2001, Tr.No.1444 of 2001. By the said order, the learned Magistrate has taken cognizance of offences under Sections 147,341 and 323 of the Indian Penal Code. The petitioners have also prayed for quashing of the entire criminal proceeding in Complaint Case No.465 of 2001.

2. Short fact of the case is that Opp.Party no.2 filed a complaint in the court of the learned Chief Judicial Magistrate, Banka on 6.6.2001, which was number as Complaint Case No.465 of 2001, on an allegation that both the petitioners had

committed offences under Sections 420,409,323, 324,147, 504, 384 and 341 of the Indian Penal Code. It was alleged in the complaint petition that the complainant had deposited Rs.96, 000/- in the Post Office and regularly he was getting interest of Rs.1040/- per month. However, subsequently, payment of interest was stopped by the accused persons. It was alleged that repeatedly the complainant approached the accused persons for making payment, but they were threatening the complainant. It was alleged that by force, accused persons got signature from the complaint on a number of blank papers. It was alleged that the complainant had filed a case in the Consumer Court. It was further alleged that on 5.6.2001 while he was going to Amarpur , both the petitioners arrived there over a Jeep and thereafter accused persons tried to push the complainant to his Jeep. It was alleged that petitioner no.1 at the time of occurrence was saying that the complainant would be killed. It was alleged that the complainant had received injury on his head and hand. However, when he raised alarm, a number of people gathered there and anyhow he could be saved. After filing of the complaint petition, an enquiry was conducted and thereafter the learned Magistrate by the impugned order, i.e. order dated 21.9.2001 has taken cognizance of offences under Sections 147,341 and 323 of the Indian Penal Code.

3. Aggrieved with the order of cognizance, the petitioners approached this Court by filing the present petition.

4. On 19.3.2004, while issuing notice to Opp.Party no.2, this Court had directed that during the pendency of this application, further proceeding in Complaint Case No.465 of 2001, Tr.No.1444 of 2001 pending in the court of Judicial Magistrate, 1st Class, Banka, shall remain stayed. Thereafter, on 30.8.2004 the petition was admitted for hearing. At the time of admission, Opp.Party no.2 had already appeared.

5. At the time of hearing before this Court none has appeared.

6. On perusal of the record, it appears that a counter affidavit was also filed on behalf of Opp.Party no.2. I have perused the same.

7. On perusal of the materials available on record, it appears that on 30.5.2001 petitioner no.1 in the capacity of Assistant Superintendent of Postal Department, Banka Sub Division, and Banka had filed a written complaint before the Officer Incharge of Amarpur Police Station. In the written report, it was alleged that one Shyamlal Pathak , Postal Assistant had connived with the complainant Subodh Kumar Mishra and thereafter fake payment in respect of National Savings Certificate was made and, as such, accused persons conniving with each other had misappropriated huge government fund . On the basis of written report submitted by petitioner no.1, an F.I.R. vide Amarpur P.S. Case No. 96 of 2001 was registered on 14.6.2001. I have also perused the contents of the complaint petition. Prima facie the allegation made in the complaint petition appears to be not probable, particularly in view of the fact that prior to the filing of the complaint petition an F.I.R. was already lodged against the complainant by petitioner no.1, who was Assistant Superintendent of Postal Department. The Court is of the opinion that the present complaint was filed maliciously and with a view to create a defence in the criminal case, in which the complainant was made accused. It appears that for the purpose of taking defence, the complainant had also asserted in the complaint petition that the petitioners had forcibly obtained signature of the complainant on a number of blank of papers. On the basis of materials available on record, the Court is of the opinion that the case was filed maliciously and it is a fit case for exercising inherent jurisdiction in favour of the petitioner.

Accordingly, the order of cognizance dated 21.09.2001 passed by Sri S.Kumar, Judicial Magistrate, Banka in Complaint Case No.465 of 2001, Tr.No.1444 of 2001 is hereby set aside and the petition stands allowed.

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