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Court : Patna

Decided On : Sep-16-2010

Judge : Akhilesh Chandra, J.

Acts : Code of Criminal Procedure (CrPC) - Section 482; Indian Penal Code (IPC)
- Sections 380, 452

Appeal No. : CRIMINAL MISCELLANIOUS No.37176 OF 2005

Appellant : Dharm Godha, and anr.

Respondent : State of Bihar, and anr.

Advocate for Def. : Mr. Atul Chandra, Adv.

Advocate for Pet/Ap. : Mr. Kali Kant Jha; Abhay Kumar Thakur, Adv.

Judgement :

1. Heard learned counsel for the two petitioners and Additional Public Prosecutor for the State. None appeared on behalf of the complainant-opposite party in spite of earlier appearance and filing and belated and disputed counter affidavit as appears from earlier order dated 18.03.2009.

2. This is an application under Section 482 of the Code of Criminal Procedure seeking quashing of order dated 17.02.2004 passed by Shri R.K.Chaudhary, Judicial Magistrate, 1st Class, Darbhanga, taking cognizance for the offences under Sections 380 & 452 of the Indian Penal Code in Complaint Case No. 08 of

2002, Trial No. 821 of 2005.

3. The relevant facts of this case is that opposite party no. 2 on 3rd January, 2002 preferred the complaint before Chief Judicial Magistrate, Darbhanga alleging therein that in his absence on 30th October, 2001 in the afternoon occurrence took place in banglow no. 6, but where in since after allotment, he was residing with his family working as Senior Manager, Engineering Services, Ashok Paper Mills Limited, Rameshwar Nagar, Darbhanga for last twenty-two years. It is further averted that to attain the family function known as Kojgara of his son Nripendra Kumar Thakur. The complainant had gone to his native village entrusting care of the banglow to one Chandra Nath Jha, who was residing at outer Varandah and on 30.01.2001 at about 3.00 p.m., the two petitioners along with their associates arrived, unlocked the banglow and took away the articles worth Rs. 2,25,000/-. In spite of protest and objection by the care taker, who was threatened to be killed, ultimately informed the complainant, who returned on 04.11.2001, after initial enquiry informed police and higher officials. When they could not respond, the complaint was filed after more than two months of the occurrence.

4. After recording statement of the complainant on solemn affirmation and a few witnesses including care taker Chandra Nath Jha, the court below took cognizance for the offences under Section 380 & 452 of the Indian Penal Code giving rise to this instant application.

5. It is submitted on behalf of the petitioners that in spite of no materials available cognizance has been taken in the case filed with ulterior motive just to pressurize the management of Ashok Paper Mills Limited to provide some benefits to the complainant for which he was not at all entitled, but persuading for last several years and when failed adopted pressure tactics by filing the complaint petition with improbable averments. He was never allotted such quarter nor he was presiding therein nor he was under employment of the organization. Learned Additional Public Prosecutor while supporting the impugned order submitted that after recording the statement of the complainant and other witnesses finding prima facie case, court below has taken cognizance, which needs no interference.

6. Undisputedly, banglow no. 6 where as alleged occurrence took place is the property of the industry under management of the petitioners and as per complainant-opposite party no. 2, it was allotted to him as being Senior Manager, Engineering Services and he has been resided with family for last twenty-two years. This statement of the complainant could be substantiated only when there is any evidence to support allotment of the quarter to him and his employment with the organization headed by the petitioners, but my attention was drawn towards Annexure-2, statement of the complainant on solemn affirmation wherein he himself asserts that his services are not being regularized nor he is being paid any remuneration since April 1996 and further towards end he asserts that before leaving the place for his village neither he obtained leave nor permission from his employer. Annexure-3 is statement of Chandra Nath Jha, the care taker in reply to Court's question admits that he has never seen the complainant working with the organization known as Ashok Paper Mills Limited. He also asserts that he simply informed the complainant about the occurrence, but did not choose to inform any authority. Annexure-4 is the statement of another witness, who in reply to Court's question asserts that he had last seen the complainant working with Ashok Paper Mills Limited in the year 1981- 82, but from the year 1995 the complainant has been working as electrical engineer in Mukhtapur Jute Mills, where he has also been allotted residential accommodation. Further, he has disclosed name of neighbour of the complainant as one N.P.Verma, Supervisor there at Mukhtapur, district Samastipur. After drawing my attention towards the above statements, learned counsel for the petitioners submits that these are the materials which falsified the claim of the complainant that he was under the employment of the organization and said banglow was in his occupation at the relevant time.

7. Apart from the above some documents has also been filed on behalf of the petitioners by way of legal notice sent on behalf of the complainant just a few days after filing of the complaint to show that he has been persuading for regularization of his service from which he initially went on leave in early 80's, but never return, but joined and continued under employment at different organization from where he has recently been retired. Learned Additional Public Prosecutor in spite of trying his level best could not produce any material to rebut all such submissions.

8. It appears that the complainant-opposite party no. 2 has just in order to put some pressure upon the management of Ashok paper Mills Limited, got initiated the criminal proceeding by lodging the complaint with some frivolous imaginary and unfounded allegations which are evident from the materials produced before the court below by way of the witnesses examined during enquiry as well as the averments made in the complaint petition concealing the possible documents i.e. papers showing allotment of the banglow by the management ruler opposite party no. 2 at any point of time.

9. Law is very clear that criminal proceedings cannot be permitted to continue to satisfy some personal vendetta of the prosecution side. And if it is permitted to continue, it shall be nothing but wastage of precious judicial time and abuse of process of law. Hence, the impugned order is not sustainable, consequently quashed and this application stands allowed.

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