

Tarique Ahmad. Vs. State of Bihar.

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Court : Patna

Decided On : Sep-23-2010

Judge : Rakesh Kumar, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 482, 156(3); Indian Penal Code (IPC) - Sections 420, 384, 323; Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Sections 3(i)(x), 4, 9

Appeal No. : CRIMINAL MISCELLANEOUS No.31887 OF 1999

Appellant : Tarique Ahmad.

Respondent : State of Bihar.

Advocate for Def. : Mr.Jharkhandi Upadhyay, Adv.

Advocate for Pet/Ap. : M/s. Najmul Hoda; Firoz Ahamd; Dr.Alok Kumar Alok, Adv.

Judgement :

1. The sole petitioner, while invoking inherent jurisdiction of this court under section 482 of the Code of Criminal Procedure, has prayed for quashing of an order dated 8.9.1999 passed by the Chief Judicial Magistrate, Kishanganj in G.R. Case No.136 of 1998 arising out of Bahadurganj P.S. Case No.15 of 1998. By the said order learned Magistrate has taken cognizance of offences under sections 420, 384 and 323 of the Indian Penal Code and under Section 3/4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

(hereinafter referred to as S.C./S.T. Act).

2. Short fact of the case is that earlier a complaint was filed by the informant/complainant-Babu Lal Pandiya in the Court of Chief Judicial Magistrate, Kishanganj vide Complaint Case No.32 of 1998 which was referred to the police for its registration and investigation under section 156(3) of the Code of Criminal Procedure and, thereafter, first information report vide Bahadurganj P.S. Case No.15 of 1998 was registered. After investigating the case, the police submitted charge sheet and, thereafter, learned Magistrate by order dated 8.9.1999 has passed order of cognizance and summoned the petitioner to face trial. Since in the present case main ground has been taken by the learned counsel for the petitioner that order of cognizance is bad in law due to the reason that the case was investigated by the Officer below the rank of Deputy Superintendent of Police which was contrary to the provisions contained in Rules 7 of S.C./S.T. Rules, 1995 and section 9 of the S.C./S.T. Act.1989, it is not necessary to give in detail the accusations made against this petitioner.

3. It was submitted by learned counsel for the petitioner that as per the provisions of S.C./S.T. Act and Rules, no Officer below the rank of Deputy Superintendent of Police was authorized either to register a case or investigate a case for the offence under the S.C./S.T. Act. It was submitted that in the present case Assistant Sub.Inspector of Police was the investigating officer and, as such, on the ground of lack of jurisdiction of investigating officer it has been argued that the entire proceeding against the petitioner is vitiated and, as such, order of cognizance is liable to be set aside. Learned counsel for the petitioner in support of his argument has referred to a judgment reported in 2002 Cr.L.J.3872 (State of Karnataka v. Smt.D.Jayamma). It was submitted that in the said case prosecution was set aside on the ground that the case under S.C./S.T. Act was investigated by an Inspector of Police and not by the Deputy of Superintendent of Police as prescribed under the Rules. Similar view was taken in another case reported in 2004 Cr.L.J. 2626 (Chandrashekhar Pani and others.Vrs.State of Orrisa). Learned counsel has also relied on a judgment of this Court reported in 2000(1) PLJR 889 (Mohan Choudhary v. The State of Bihar and others). In all the cases it has been argued that the prosecution was set aside on the ground that the case was not

investigated by an Officer as required by law i.e. Officer not below the rank of Deputy Superintendent of Police. In all such cases Investigating Officer was either Sub-Inspector of Police or Inspector of Police or even Assistant Sub-Inspector of Police and as such on the strength of the aforesaid judgments it has been argued that in the present case also, since investigation was conducted by an Assistant Sub-Inspector of Police, order of cognizance as well as the entire criminal proceeding is liable to be set aside.

4. Mr.Jharkhandi Upadhaya, learned Additional Public Prosecutor appearing on behalf of the State on the strength of averments made in the counter affidavit which was filed on 27.8.2010, has vehemently opposed the prayer of the petitioner. It has been submitted that allegations made in the first information report was thoroughly investigated by the Police and thereafter chargesheet was submitted against the petitioner. It was argued that there were sufficient materials on record to suggest commission of offence as alleged in the first information report and as such the learned Magistrate while taking cognizance of offence has committed no mistake. Learned counsel for the State has heavily relied on annexure-1 to the counter affidavit which is a notification issued under the provisions of S.C./S.T. Act. Learned counsel for the State has also produced a copy of an order passed by a Bench of this Court in Cr.Misc.No. 45227 of 2008 (Chandrabhushan Tiwari alias Bare Tiwari and others.Vrs.The State of Bihar and another). The said judgment was delivered on 19.7.2010. Photo copy of the order has been kept on record. It has been submitted that this court had occasioned to examine the notification issued by the Government and in the said case the accused persons were aggrieved with the order of cognizance dated 24.5.2008 whereby the learned Magistrate had taken cognizance of the offence under Section 3(i)(x) of the S.C/S.T.Act. After noticing the notification whereby Assistant Sub-Inspector of Police was authorized to investigate the case, this court has repelled the argument advanced on behalf of the accused-petitioners, that the case was not investigated by an Officer either of the rank of Deputy Superintendent of Police or above the rank of Deputy Superintendent of Police and as such, the order of cognizance was legal. On the basis of judgment of this Court dated 19.7.2010 as well as notification of authorization of the State Government, Mr.Jharkhandi Upadhaya, learned counsel for the State has

submitted that the petition has got no merit and is liable to be rejected.

5. Alternatively, it has been argued by learned counsel for the petitioner that so far as notification issued by the State Government authorizing the Assistant Sub-Inspector of Police is concerned, that notification has been challenged in a writ petition which has been admitted and the same is pending. It was submitted that during the pendency of the writ petition it would be advisable to defer the hearing of the present case awaiting the result of the said writ petition. Learned counsel for the petitioner, of course has not given the number of the writ petition.

6. Besides questioning the jurisdiction of investigating officer, learned counsel for the petitioner has also taken other grounds.

7. Besides hearing learned counsel for the parties, I have also perused the materials available on the record as well as judgments which have been referred to by the learned counsel for the parties. On the basis of materials available on the record, the Court is satisfied that the order of cognizance was passed rightly and correctly. So far as judgments referred to in Smt.D.Jayamma, Chadrashekhhar Pani's case (supra) and Mohan Choudhary's case (supra) are concerned, in those cases notification regarding authorization of Assistant Sub-Inspector of Police for investigating the offences under the S.C./S.T.Act was not examined and as such no benefit can be given to the petitioner on the strength of the aforesaid judgments. On the contrary, this Court in Cr.Misc.No. 45227 of 2008 (Chandrabhushan Tiwari alias Bare Tiwari and others Vrs. State of Bihar and another) passed on 19.7.2010 had noticed a judgment passed by Hon'ble the Supreme Court in the case of State of M.P. v. Chunni Lal alias Chunni Singh. In that case, this court has distinguished the said case on the ground that in the said case there was no such notification as issued in the State of Bihar. This Court has also examined the provisions contained in Section 9 of the S.C./S.T.Act, 1989 and Rule 7 of the S.C./S.T. Rules, 1995 and thereafter had rejected the petition filed against the order of cognizance. Keeping in view the fact that similar point has already been decided, this Court has no option but to follow the same principle. In agreement with the view expressed by this Court in Chandrabhushan Tiwari alias Bare Tiwari and others (supra), this Court is of the opinion that the present case is

not a fit case for exercising inherent jurisdiction in favour of the petitioner. The alternative argument which has been raised by learned counsel for the petitioner that since the writ petition questioning the notification of authorization of Assistant Sub-Inspector of Police is pending this case may be kept in abeyance is concerned; the Court is of the view that such submission is required to be noticed only for its rejection. Accordingly, I do not find any merit in the present case and the petition stands rejected.

8. Keeping in view the fact that the present case was pending since long and there was an order of stay, it is desirable to direct the court below to proceed with the case expeditiously.

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

10. Let a copy of this order be sent to the court below forthwith.

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