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Court : Patna

Decided On : Oct-06-2010

Judge : Rakesh Kumar, J.

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

Appeal No. : CRIMINAL MISCELLANEOUS No.20569 OF 2003

Appellant : Rajendra Singh, and ors.

Respondent : State of Bihar, and anr.

Advocate for Def. : Mrs.Indu Bala Pandey, Adv.

Advocate for Pet/Ap. : Mr. Chitranjan Sinha, Adv.

Judgement :

1. Four petitioners, who are Site Incharge, Kudankulam Nuclear Power Project, Tirunelveli, Tamil Nadu, Project Manager, Kudankulam, Tirunelveli, Tamil Nadu, Managing Director, Hindustan Construction Corporation and D.G.M., Hindustan Construction Corporation respectively, are before this Court, while invoking its inherent jurisdiction under Section 482 of the Code of Criminal Procedure with a prayer to quash an order dated 2.4.2003 passed by Sub Divisional Judicial Magistrate, Begusarai in Complaint Case No.165C of 2003. By the said order, the learned Magistrate, while taking cognizance of offence under Sections 323 and 379 of the Indian Penal Code, has directed for issuance of process against the

petitioner.

2. Short fact of the case is that opposite party no.2 claiming to be a Labour Contractor, filed a complaint in the court of Chief Judicial Magistrate, Begusarai, which was numbered as Complaint Case No.165C of 2003. In the complaint petition, it has been disclosed that the petitioners had executed some contract work and thereafter, about Rs.47 lakhs amount of complainant remained due. Subsequently, he returned back to his native place. It was alleged that on 6.2.2003, petitioner no.2 along with one person arrived the house of complainant and asked him to come to a particular place at Begusarai for receiving payment. It was alleged that when he visited the place as per direction of petitioner no.2, he witnessed that all the accused persons were present there. It was alleged that the accused persons putting the complainant in fear of pistol compelled him to put signature on two blank papers. It was further alleged that accused persons had assaulted the complainant through the butt of the pistol. It was also alleged that accused persons forcibly took Rs.1700/- from the pocket of the complainant. On such allegation, the complaint was filed and after conducting enquiry, the learned Magistrate, by the impugned order, has taken cognizance of offence under Sections 323 and 379 of the Indian Penal Code.

3. Aggrieved with the order of cognizance, the petitioners approached this Court by filing the present petition. On 12.4.2004, while issuing notice to opposite party no.2, this Court directed that during the pendency of this application, proceeding of Complaint Case No.165C of 2003 pending in the court of Sub Divisional Judicial Magistrate, Begusarai shall remain stayed. Subsequently, on 18.11.2005, the case was admitted for hearing and it was directed that the interim order of stay granted on 12.4.2004 shall continue. The order of stay is still continuing.

4. In this case, learned counsel has appeared on behalf of opposite party no.2.

5. Shri Chitranjan Sinha, learned counsel appearing on behalf of the petitioners, while pressing the present petition, has submitted that entire prosecution and impugned order is liable to be set aside solely on the ground of improbability. Besides this, it has been submitted that in the complaint petition, the complainant has not even disclosed as to at which place he was doing the contract work and

when he was compelled to return back to his native place. Only an improbable story was cooked up with a view to put pressure on the complainant for realization of some dues as claimed by the complainant. Learned counsel for the petitioners, while pressing the present petition, has referred to number of documents enclosed with the present petition. It was submitted that an agreement was entered in between the parties and the complainant was a petty Labour Contractor. It was submitted that despite the fact that entire payment was made either to the labourer of the complainant or to the complainant, the complainant un-necessarily raised dispute or he had earlier also sent a legal notice for making payment of Rs.15 lacs. Learned counsel for the petitioners has referred to Annexure-7 to the petition at pages 178 to 180 of the present petition. Learned counsel for the petitioners, while referring to Annexure-8, submits that the legal notice sent by the complainant was replied on behalf of the Hindustan Construction Corporation Ltd. It was submitted that as per the reply, it is evident that there were no due against either Hindustan Construction Corporation Ltd. or against the Kudankulam Nuclear Power Project, Tamil Nadu. It has further been submitted that the petitioner nos.1 and 2 are senior officers of Kudankulam Nuclear Power Project, which is a project of Government of India and petitioner nos.3 and 4 are top officers of the Hindustan Construction Corporation Ltd. It has been submitted that it cannot be assumed that an officer of such senior rank will come from Tamil Nadu for the purpose of obtaining of signature of complainant and put the complainant on fear of pistol or arms and ammunition. It cannot be expected that such senior officers can forcibly extract or take Rs.1700/- from the pocket of the complainant. On the basis of the contents of the complaint petition, it has been submitted that the allegation appears to be improbable and, accordingly, the entire proceeding as well as order of cognizance is liable to be set aside. Learned counsel for opposite party no.2 has vehemently opposed the prayer of the petitioners.

6. I have also heard Smt. Indu Bala Pandey, learned Additional Public Prosecutor for the State.

7. Besides hearing learned counsel for the parties, I have also perused the materials available on record. At this stage, it would not be appropriate to examine the documents, which have been brought on record through the present petition,

but in peculiar facts and circumstances of the present case, I have simply perused Annexure-7 of the petition, which is a legal notice issued on behalf of the complainant. This indicates that the allegation of the complainant that Rs.47 lacs were outstanding with the accused persons appears to be not true. In the legal notice itself, he had claimed due for an amount of R.15 lacs, which has been clarified by giving reply on behalf of Hindustan Construction Corporation Ltd., which is as Annexure-8. However, without recording any positive finding in respect of documents, the court has been persuaded to pass order in favour of the petitioners in view of the improbable allegations made in the complaint petition. The contents of the complaint petition appears not to be probable and on this ground alone, the court is of the opinion that allowing prosecution of the petitioners on such complaint will amount to allowing the abuse of process of the court. With a view to prevent the abuse of the process of the court, the order of cognizance dated 2.4.2003 passed by Sub Divisional Judicial Magistrate, Bugusarai in Complaint Case No.165C of 2003 as well as entire criminal proceeding against the petitioners are hereby set aside and petition stands allowed.

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