

Mohan Prasad Singh. Vs. State of Bihar.

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Court : Patna

Decided On : Jan-31-2011

Judge : Rakesh Kumar, J.

Acts : Code of Criminal Procedure (CrPC) - Section 482 Indian Penal Code (IPC) - Sections 323, 379, 504, 147, 148; Arms Act - Section 27

Appeal No. : CRIMINAL MISCELLANEOUS No.19473 OF 2002

Appellant : Mohan Prasad Singh.

Respondent : State of Bihar.

Advocate for Def. : Sri A.M.P.Mehta, Adv.

Advocate for Pet/Ap. : S/Sri Ram Balak Mahto; Ajay, Adv.

Judgement :

1. Five 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 26.4.2002 passed in Complaint Case No. 448 of 2002, whereby the learned Judicial Magistrate, 2nd Class, Hajipur, Vaishali has taken cognizance of offences under Sections 323, 379 and 504 of the Indian Penal Code and directed for summoning the accused persons. Petitioners have also prayed for quashing of the order dated 10.5.2002, whereby the order dated 26.4.2002 was modified to the extent of summoning all the five accused persons.

2. Short fact of the case is that Opp.Party no.2 filed a complaint in the court of learned Chief Judicial Magistrate, Hajipur , Vaishali vide Complaint Case No.448 of 2002 against all the petitioners that on 26.1.2002 at about 5.00 P.M. he noticed that accused persons were cutting his Shisham tree, which was lying on his Plot No.777, Khata No.101/102. On objection being raised by the complainant, accused persons abused the complainant and threatened him to get away and thereafter one of the accused opened fire from his revolver and ran towards the complainant. However, the complainant any how fled away. Again accused Madhu Singh, who had fired, returned back and all the accused persons started cutting the tree. After filing the complaint, the complainant was examined on S.A. and in support of his complaint, three witnesses were examined and thereafter by an order dated 26.4.2002, the learned Judicial Magistrate, 2nd Class, Hajipur, Vaishali took cognizance of the offences under Sections 323,379 and 504 of the Indian Penal Code against all the accused persons and directed for summoning all the four accused persons. Subsequently, on 10.5.2002 on the prayer made on behalf of the complainant, learned Magistrate made minor correction in the order dated 26.4.2002 and instead of summoning four accused persons, learned Magistrate directed for summoning all the five accused persons.

3. Aggrieved with the order of cognizance, petitioners approached this Court by filing the present petition. On 23.1.2003, learned counsel for the petitioner was permitted to add the complainant as Opp.Party no.2 and directed for issuance of notice to Opp.Party no.2. In the meanwhile, it was directed that further proceeding in Complaint Case No.448 of 2002 pending in the court of J.M. 2nd Class, Hajipur shall remain stayed. On 23.4.2004, the case was admitted for hearing. Despite the fact that Opp.Party no.2 had already entered his appearance through his counsel, none appeared on his behalf at the time of hearing of the petition and, as such, in absence of any representation on behalf of Opp.Party no.2, the case was heard.

4. Sri Ram Balak Mahto, learned Senior Counsel appearing on behalf of the petitioners at the very outset submits that the complaint petition was filed with a view to dissuade petitioner no.2 from proceeding with Complaint Case No.367 of 2002, which was filed against the complainant, his father, brothers and others. While referring to Annexure-1 to the petition, which is written information given to

the Officer Incharge of Jandaha Police Station on 27.1.2002, it was submitted that petitioner no.2 was looking after the agriculture work of one Dr. Mohan Prasad Singh (petitioner no.1). It was disclosed that number of Shisham trees (logs) were kept near the door of Dr. Mohan Prasad Singh. However, on 26.1.2002 at about 3.00 P.M. , father of the complainant of the present case, the complainant, his brother and others forcibly took away all the Shisham logs from the door of Dr. Mohan Prasad Singh, which was objected , but one of the accused Dadan Singh abused and also took out his revolver for firing. Since the police did not register an F.I.R., petitioner no.2 on 25.2.2003 filed a complaint vide Complaint Case No.367 of 2002 regarding the occurrence, which had taken place on 26.1.2002 at about 3.00 P.M. on an allegation of commission of offences under Sections 147,148, 504, 379 of the Indian Penal Code and 27 of the Arms Act. After filing of the complainant and conducting enquiry by its order dated 5.4.2002, the learned Magistrate took cognizance of offences under Sections 147 and 379 of the Indian Penal Code against all the accused persons including Opp.Party no.2 (complainant of the present case) and summoned the accused persons. It was submitted that immediately after coming to know that complaint was filed by petitioner no.1 against Opp.Party no.2 and other accused persons including his father and brothers, the Opp.Party no.2 maliciously in a designed manner on 7.3.2002 filed the present complaint vide Complaint Case No.448 of 2002 in the court of learned Chief Judicial Magistrate, Hajipur, Vaishali and suppressing the fact of initiation of the enquiry in the complaint filed by the petitioner no.1, Opp.Party no.2 persuaded the learned Magistrate for taking cognizance of the offence against the petitioners. Accordingly, it was submitted that it is an apparent example of abusing the process of the court and, as such, it is a fit case for quashing of the order dated 26.4.2002 and 10.5.2002 passed in Complaint Case No.448 of 2002 by the learned Judicial Magistrate, 2nd Class, Vaishali at Hajipur.

5. Sri Ram Balak Mahto, learned Senior Counsel has further argued that this case is squarely covered under the categories of cases for interference as laid down by the Apex Court in a case reported in AIR 1992 SC 604 (State of Haryana v. Bhajanlal).

6. Sri A.M.P.Mehta, learned Addl.Public Prosecutor appearing on behalf of the State even in absence of any representation on behalf of Opp.Party no.2 has vehemently opposed the prayer of the petitioner and it was submitted that at the initial stage of cognizance, this Court may not interfere and accordingly, he has prayed for rejection of the present petition.

7. Besides hearing learned counsel for the petitioners and the State, I have also perused the materials available on record. Annexure-2 is a photo copy of the certified copy of petition of complaint in complaint Case No. 367 of 2002, which was filed by petitioner no.2 against six accused persons including Opp.Party no.2, who has been named as Nanhi Singh @ Dharmendra Singh Son of Brij Nandan Singh .Amongst others, father of Opp.Party no.2, namely, Brij Nandan Singh and his brother Dadan Singh were also made accused. In the complaint filed by petitioner no.2, the date and time of occurrence has been mentioned as 26.1.2002 at 3.00 P.M. It appears that the said complaint was filed on 25.2.2002, in which allegation was made for removing Shisham logs from the door of petitioner no.1, in which after conducting enquiry, the learned Magistrate took cognizance of offences. In the present case, Opp.Party no.2 has filed complaint subsequently on 7.3.2002 i.e. after several days from the date of the filing of the complaint by petitioner no.2. Before filing the complaint, petitioner no.2 had also claimed that immediately after the occurrence dated 26.1.2002 he had filed a written application before the Officer Incharge of Jandaha Police Station, Vaishali on 27.2.2002. It was submitted on behalf of the petitioners that said application, though, received in the Police Station, no action was taken by the police and only thereafter, petitioner no.1 had filed complaint Case No.367 of 2002. In the complaint filed by petitioner no.2, allegation was for committing offence under Section 379 of the Indian Penal Code for removing Shisham logs as well as for displaying revolver for preventing removal of the Shisham logs.

Opp.Party no.2 in a similar manner relating to theft of Shisham tree much after filing of the complaint by petitioner no.2 filed the present complaint at a subsequent stage. After going through the materials available on record, the Court is persuaded to accept the submission of Sri Ram Balak Mahto , learned Senior Counsel appearing on behalf of the petitioners that the present complaint was filed

maliciously and with oblique motive and for preventing abuse of the process of the Court, it is necessary to interfere with the impugned order. Considering the facts and circumstances of the case, the Court is of the opinion that it is a glaring case of the abuse of the process of the Court and with a view to prevent the same it is imperative for this Court to exercise inherent jurisdiction in favour of the petitioners. Accordingly, the order dated 26.4.2002 and 10.5.2002 passed in Complaint Case No.448 of 2002 by the learned Judicial Magistrate, 2nd Class, Vaishali at Hajipur are hereby set aside and the petition stands allowed.

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