

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.393 of 2015

Arising Out of PS.Case No. -48 Year- 2012 Thana -BRAHMPUR District- BUXAR

1. Suryamunni Devi @ Suryamunna Devi , Wife of Sheojee Bari

2. Sheojee Bari @ Sheojee Prasad Son of Late Vyas Bari

3. Ashok Kumar Singh Son of Late Arjun Singh

4. Shashi Bhusan Singh Son of Late Arjun Singh

All Resident of Brahmapur,P.S-Brahmapur,District-Buxar,Bihar

.... Petitioners

Versus

1. The State of Bihar

2. The Circle Officer, Brahmapur

.... Opposite Parties.

Appearance :

For the Petitioner/s : Mr. Avinash Shekhar, Advocate
Mr. Surendra Kumar Singh

For the Opposite Party/s : Dr. Mayanand Jha, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 13-07-2016

Heard Mr. Avinash Shekhar, learned counsel being assisted by Mr. Surendra Kumar Singh for the petitioners and Dr. Mayanand Jha, learned Additional Public Prosecutor for the State.

2. By the present application preferred under Section 482 of the Code of Criminal Procedure (for short 'CrPC') the petitioners have invoked the inherent jurisdiction of this Court for quashing of the order dated 22nd November, 2012 passed by the learned Judicial Magistrate, 1st Class, Buxar in G. R. No. 286 of 2012, arising out of Brahmapur P. S. Case No. 48 of 2012 whereby

cognizance has been taken of the offences punishable under Sections 188 and 384 of the Indian Penal Code (for short 'IPC').

3. The First Information Report (for short 'FIR') of the aforesaid Brahampur P. S. Case No. 48 of 2012 was registered on the basis of a written report of the Circle Officer, Brahampur submitted to the Officer-in-charge of Brahampur police station wherein it has been stated that the District Magistrate, Buxar, vide letter bearing memo no. 030363 dated 15.02.2012, has informed the Circle Office that settlement of the Brahampur Faguni and Vaishakhi Shivratri Cattle Fair, 2012 (for short 'Cattle Fair') has been made in favour of one Bharat Bhushan Singh. The said Bharat Bhushan Singh has informed the Circle Officer that the petitioners along with some other persons are involved in illegal collection of revenue in the Cattle Fair and are using criminal force and creating obstruction in execution of his duty to collect revenue pursuant to the Parwana issued in his favour by the District Magistrate, Buxar.

4. On the basis of the above written complaint of the Circle Officer, the aforesaid FIR was registered under Section 384, 353 and 188 of the IPC and investigation was taken up.

5. On completion of investigation, the police submitted their report under Section 173(2) of the CrPC finding the allegation made against the petitioners to be true under Section 384,

353 and 188 of the IPC. However, vide impugned order dated 22nd November, 2012, the learned Magistrate took cognizance of the offences punishable only under Sections 384 and 188 and summoned the petitioners to face trial.

6. It is urged by learned counsel for the petitioners that the petitioners have been implicated in this case at the behest of Bharat Bhushan Singh in collusion with the opposite party no. 2 and others. The entire accusation made against the petitioners have been levelled out of malice in connection with settlement of the Cattle Fair and in order to circumvent the law as contained in Bihar Panchayat Raj Act, 2006 (for short 'the Act'). It is submitted that Section 22(17) of the Act lays down that the operation and management of fairs, including Cattle Fair, is entrusted with Gram Panchayat and, as such, it is the Gram Panchayat, who has the authority to manage and operate fairs including Cattle Fair within their jurisdiction and no authority including the District Magistrate had any role or power to settle such fairs. In exercise of power provided to Gram Panchayat under Section 22(17) of the Act, the Gram Sabha and Executive Committee of Brahampur Gram Panchayat had passed resolution for taking responsibility of managing and operating the Cattle Fair and the petitioner no. 1, who was the then Mukhiya of Brahampur Gram Panchayat, accordingly, notified the Collector, Buxar and Principal Secretary,



Revenue and Land Reforms, Government of Bihar in this regard vide letter dated 15.09.2011. When nothing was communicated by the Collector, Buxar to the petitioner, she wrote a letter on 12.12.2011 to the Principal Secretary, Revenue and Land Reforms, Government of Bihar requesting him to take immediate decision, as the Panchayat was suffering economic loss.

7. It has been argued that the petitioners were anticipating foul play with regard to settlement of Cattle Fair, as rumours were ripe in the village that some people were adamant to get the settlement of the said Cattle Fair in their favour and were resorting to illegal means to achieve their ulterior motive. However, on repeated representations of the Gram Panchayat, the Under Secretary to the Government, Department of Revenue and Land Reforms, vide letter no. 9-1, Buxar 09/12-29 dated 13.02.2012 had directed the District Magistrate to take appropriate action on the issue. In the light of the above letter, the Panchayat started making elaborate arrangements for smooth management and operation of the Cattle Fair and various persons including the petitioners were deputed the task of managing and overseeing the operation of the said fair. Surprisingly, on 15th February, 2012, the District Magistrate, Buxar issued Parwana whereby the settlement of the Cattle Fair was made in favour of Bharat Bhusan Singh and, on the same day, in a peculiar manner, the entire machinery including the

Circle Officer in Brahampur came into action in order to forcibly take control of the Cattle Fair and, to this end, on the very same day, a false and frivolous case was registered by the opposite party no. 2 on the complaint of Bharat Bhushan Singh in order to get the petitioners arrested so that they may not be able to raise any objection or protest against the illegal settlement of the said fair.

8. It is one of the contentions of the petitioners that the police investigated the case in a casual manner and without there being any evidence submitted their report under Section 173(2) of the CrPC holding the case to be true against the petitioners for the offences alleged in the FIR, but the learned Magistrate took cognizance of the offences only under Sections 384 and 188 of the IPC and summoned the petitioners to face trial. It is submitted that the impugned order taking cognizance is bad in the eye of law in view of the absence of ingredients of the offences alleged.

9. *Per contra*, Dr. Mayanand Jha, learned Additional Public Prosecutor for the State has submitted that the settlement of the Cattle Fair has come under the control of Revenue Department, Government of Bihar and is used to be settled by the Department through Collector of the District. In the year 2012, the Cattle Fair in question was settled by the District Magistrate, Buxar with the person, namely, Bharat Bhushan Singh



and, vide letter no. 030363 dated 15th February, 2012, the District Magistrate had informed the Circle Officer of Brahampur in respect of the settlement. According to the settlement and provisional Parwana, Bharat Bhusan Singh was the right person to make all arrangements to provide facilities to the person going to the Cattle Fair and collect revenue. However, on 15th February, 2012, the petitioners were found collecting revenue in the Cattle Fair and when their action was objected by the settlee, the petitioners protested and said that they were authorized to collect revenue in the Cattle Fair in view of the provision prescribed under Section 22(17) of the Act.

10. Dr. Jha has contended that though Gram Panchayat has authority to manage and operate fairs, including the Cattle Fair within its jurisdiction under Section 22(17) of the Act, it could have collected revenue only if the management and operation of the fairs being settled by the Revenue Department would have been transferred to the Gram Panchayat. He has conceded that after the year 2012, the Cattle Fair in question has come under the control of Gram Panchayat, Brahampur and the said Fair is now being settled by the Gram Panchayat.

11. In view of the aforesaid controversy, in order to find out whether or not the ingredients of Sections 384 and 188 of the IPC are attracted, it would be relevant to take note of Sections

384 and 188 of the IPC under which the Jurisdictional Magistrate has taken cognizance, which read as under :-

“384. Punishment for extortion —

Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

188. Disobedience to order duly promulgated by public servant —

Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person, lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or

with both.”

12. Section 384 of the IPC provides penalty for ‘extortion’. The offence of ‘extortion’ has been defined under Section 383 of the IPC which reads as under :-

“383. Extortion —

Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits "extortion".”

13. It would be evident from the reading of Section 383 of the IPC that the ingredients of ‘extortion’ are; (i) the accused must put any person in fear of injury to that person or any other person; (ii) the putting of a person in such fear must be intentional; (iii) the accused must thereby induce the person so put in fear to deliver to any person any property, valuable security or anything signed or sealed which may be converted into a valuable security; (iv) such inducement must be done dishonestly.

14. The terms ‘dishonestly’, ‘illegally’ and ‘injury’ used in Section 383 of the IPC have been defined under Sections 24, 43 and 44 of the IPC respectively.

15. Section 24 of the IPC reads as under :-

"24. 'Dishonestly' —

Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

16. Section 43 of the IPC lays down the word 'illegal' is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be 'legally bound to do' whatever it is illegal in him to omit.

17. Section 44 of the IPC lays down that the word 'injury' denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.

18. On a careful consideration of the above definitions and ingredients what appear is that if someone put the others intentionally in fear to any injury and thereby, dishonestly induces that person who has been put into fear to deliver to the person any property or valuable security or anything signed or sealed or which may be converted into valuable security shall be liable to be punished for 'extortion'.

19. Thus, what is necessary for constituting an offence of 'extortion' is that the prosecution must prove that on account of being put in fear of injury, the victim was voluntarily

delivering any particular property to the man putting him into fear. If there was no delivery of property, then the most important ingredient for constituting the offence of 'extortion' would not be available. Further, if a person voluntarily delivers any property without there being any fear of injury, an offence of 'extortion' cannot be said to have been committed.

20. Considering the aforesaid interpretation of the offence of 'extortion', as defined under Section 383 of the IPC, when I look to the facts of the case in hand, I find that there is nothing on record to show that any person delivered any property to the petitioners under any fear of injury. Even on perusal of the case-diary, there is no material to support such allegation.

21. It is true that an intent to extort money may be inferred from circumstances. If it appears that the object is to collect revenue honestly believing to be due and owing to the Gram Panchayat, the alleged act of the petitioners would not attract the ingredients of the offence of 'extortion'.

22. It has been admitted by Dr. Mayanand Jha, learned Additional Public Prosecutor for the State that the Gram Panchayat had the authority to manage and operate fairs, including the Cattle Fair, within its jurisdiction under Section 22(17) of the Act. The only objection of the State is that such collection of revenue by the Gram Panchayat could have taken effect only after



the management and operation of the fairs being settled by the Revenue Department would have been transferred to the Gram Panchayat. He has conceded that after the year 2012, the Cattle Fair in question has come under the control of Gram Panchayat, Brahampur and the said fair is now being settled by the Gram Panchayat. It has also been admitted by the State that Under Secretary of the Department of Revenue and Land Reforms had directed the District Magistrate to take appropriate action on the demand of Gram Panchayat to transfer the management and operation of the fairs being settled by the Revenue Department. Under Such circumstances, if the Gram Panchayat was claiming its right of collection of revenue in the Cattle Fair, the said action cannot be termed to be an act inviting prosecution under Section 384 IPC.

23. It is also admitted by the State that the petitioner no. 1, Suryamunni Devi @ Suryamunna Devi was the Mukhiya of Gram Panchayat, Brahampur on the relevant date and time of occurrence.

24. Keeping in mind the aforesaid admitted position of the facts, even if it is presumed that the Gram Panchayat had no authority to manage and operate Cattle Fair on the date of occurrence, as such powers were not transferred by the Revenue Department to Gram Panchayat till then, the alleged act of

collection of revenue on behalf of Gram Panchayat without any allegation that anyone delivered any property in fear of injury to the petitioners cannot be termed to be an 'extortion', as the essence of offence 'extortion' is in the actual delivery of possession of the property by the persons put in fear and the offence is not complete before such delivery.

25. The only other offence alleged against the petitioner is under Section 188 of the IPC. Be it noted that disobedience to the order duly 'promulgated' by the public servant has been made an offence punishable under Section 188 of the IPC. Section 188 of the IPC, as noted above states that when an accused knows that a public servant has lawfully 'promulgated' an order, which he is empowered to do and by which he has either directed the accused to abstain from a certain act or directed to take certain order with certain property in his possession or under his management, and disobeys such direction. If such disobedience causes or has tendency to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, he shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or has tendency to cause danger to human life, health or safety, or causes or has tendency to cause riot or affray, he

shall be punished more severely that is to say with simple or rigorous imprisonment for a term extending upto six months, or with fine which may extend to one thousand rupees, or with both.

26. Thus, it would appear that the ingredients of the offence punishable under Section 188 of the IPC are; (i) that there must be order promulgated by a public servant; (ii) that the public servant must have been lawfully empowered to promulgate such order; (iii) that a person having knowledge of such order and directed by such order (a) to abstain from a certain act, or (b) to take certain order with certain property in his possession or under his management, has disobeyed such direction, (iv) that such disobedience causes or tends to cause (i) obstruction, annoyance, or injury, or risk of it, to any person lawfully employed, or (ii) danger to human life, health or safety, (iii) a riot or affray.

27. The word 'promulgated' used under Section 188 IPC means making known openly and publicly. The forms of 'promulgation' may be reading an order in an open court, or publishing the same in Gazette etc. Here, in the present case, there is no mention of any order passed by any public servant.

28. Thus, the question of its 'promulgation' does not arise. Only allegation is that on the date of occurrence, i.e., on 15.02.2012, the Cattle Fair had been settled in favour of one Bharat Bhushan Singh and a Parwana was issued in this regard by the



District Magistrate, Buxar for which a letter was written to the circle office. The letter issued by the District Magistrate or the Parwana issued under his signature cannot be termed to be an order directing the petitioners to do or omit to do any act, as in the said letter there was no direction to the petitioners and there is no evidence to show that the said letter had ever been served upon them or the Gram Panchayat. The issuance of Parwana in the name of Bharat Bhusan Singh or letter to Circle Officer was a mere communication to him. In absence of any order duly 'promulgated' by a public servant, there would be no application of the ingredients of any offence under Section 188 of the IPC to the facts of the present case.

29. It has rightly been submitted by the learned counsel for the petitioners that the FIR has been drawn against the petitioners in utter haste on 15.02.2012, as on the same day Parwana was issued in favour of Bharat Bhusan Singh by the District Magistrate whereby settlement of Cattle Fair was made in his name and on the same day the Circle Officer, Brahampur filed the FIR against the petitioners on the basis of the complaint made by the settlee Bharat Bhushan Singh.

30. In view of the discussions made, hereinabove, I am of the considered opinion that the impugned order taking cognizance of the offences punishable under Sections 384 and 188

of the IPC, is bad in law and, allowing the prosecution to continue any more, would amount to an abuse of the process of the court.

31. Accordingly, the application is allowed. The impugned order dated 22nd November, 2012 passed by the learned Judicial Magistrate, 1st Class, Buxar in G. R. No. 286 of 2012, arising out of Brahampur P. S. Case No. 48 of 2012 is hereby quashed.

(Ashwani Kumar Singh, J.)

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