

IN THE HIGH COURT OF JUDICATURE AT PATNA

SLA No.31 of 2015

Arising Out of Complaint Case No. -135C Year- 2000 Thana -null District- PATNA

1. Mehdi Imam Son of Abdul Khalik, Resident of Mohalla - Katra Mandai, P.S. Sultanganj, District - Patna

.... Petitioner

Versus

1. The State of Bihar

2. Nazir Ahmad Son of Late Mohammad Hussain then Circle Officer, Circle office (East Gandhi Maidan), P.S. Gandhi Maidan, District - Patna

3. Krishna Singh Son of Late Jagannath Singh, then Circle Inspector, Circle office (East Gandhi Maidan), P.S. Gandhi Maidan, District - Patna

4. Ramashankar Singh Son of Late Mukhlal Singh, then Employee of Circle (East Gandhi Maidan), P.S. Gandhi Maidan, District - Patna

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Rakesh Kumar Sharma, Adv.

For the Respondent/s : Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 30-09-2016

The present application under sub-section (4) of Section 378 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed seeking leave to appeal against the judgment and order dated 26th June, 2015 passed by the learned Judicial Magistrate 1st Class, Patna in Complaint Case No. 135(C) of 2000, whereby and whereunder the opposite parties no.2 to 4 have been acquitted of the charges under Sections 323, 452 and 506 of the Indian Penal Code (for short 'IPC').

2. The petitioner filed the present complaint petition in the court of Chief Judicial Magistrate, Patna on 27th January, 2000 alleging, inter alia, that the complainant had a shop near Gandhi



Maidan which was demolished by the Government illegally and forcefully. Against the said action of the Government, the complainant preferred C.W.J.C. No. 11787 of 1999 before this Court. This Court, vide order dated 14th January, 2000, directed the respondents to reconstruct the demolished shop of the complainant within seven days and file a photograph of the reconstructed shop along with an affidavit on 20th January, 2000. The Court further directed to pay a compensation of Rs.25,000/- to the complainant to be realized from the officers concerned, who were responsible for the illegal demolition of the shop. The case was directed to be listed on 28th January, 2000. It is stated that in the meantime, on 26th January, 2000, the accused persons along with armed forces entered into the residence of the complainant, abused him and misbehaved with the other female members of his family. They threatened him to give receiving of Rs.25,000/- otherwise his shop and building will be demolished. When the people of the locality assembled there, the accused persons fled away. It is further stated that on the same day on 26th January, 2000 in the evening at about 4.00 – 4.15 p.m., the accused persons again came to the shop of the complainant. Accused Nazir Ahmad and Krishna Singh asked the armed forces to take the complainant to *sahib*. Accused Rama Shankar pushed him. Accused Nazir Ahmad assaulted on his right chick with his slap and asked him



to give a sum of Rs,25,000/- along with written receiving of Rs. 25,000/- to which the complainant refused. It is further stated in the complaint petition that the complainant went to Pirbahore Police Station to lodge a case against the accused persons but the accused persons were also present there and the police refused to record case against them. On the basis of the allegations made against the accused persons, the complaint petition was filed in the court of Chief Judicial Magistrate.

3. The complainant was examined on solemn affirmation and the statement of three witnesses were recorded in course of inquiry under Section 202 of the CrPC. Vide order dated 30th May, 2000, the learned Chief Judicial Magistrate, finding prima facie case to be made out against accused no.1 Nazir Ahmad, issued summon against him to face trial for the offences under Sections 323 and 506 of the IPC. It was further held that accused nos. 2 and 3 are subordinates of accused no.1 and there is no specific overtact against them.

4. Being aggrieved by the said order of summoning, the petitioner preferred criminal revision bearing Cr. Rev. No. 378 of 2000 before the learned Sessions Judge. The learned Additional Sessions Judge X, Patna vide order dated 13th April, 2007 set aside the order dated 30th May, 2000 and directed the court below to pass fresh

order.

5. The learned Judicial Magistrate 1st Class, Patna re-heard the matter and after taking into consideration the statement of the complainant on solemn affirmation and the statements of the witnesses recorded in course of inquiry under Section 202 of the CrPC, issued summons against all the accused persons to face trial for the offences under Sections 323, 506 and 452 of the IPC.

6. In course of trial, altogether three witnesses were examined on behalf of the complainant. They are P.W.1 Abdul Rahman, P.W.2 Mehdi Imam, the complainant himself and P.W.3 Manisur Rahman. The complainant has proved his signature on the complaint petition as Ext.-1. The defence has not produced any oral evidence. They have produced some orders passed by the High Court as documentary evidences. They are (i) certified copy of the order dated 15.04.2013 passed in Cr.Misc. No. 3088 of 2008, marked as Ext.-A; (ii) certified copy of the order dated 13.12.1999 passed in C.W.J.C. No. 11787 of 1999, marked as Ext.-A/1 and (iii) certified copy of the orders dated 21.12.1999, 14.01.2000, 07.02.2000, 15.02.2000, 02.03.2000, 10.03.2000, 16.03.2000 and 24.03.2000 passed in C.W.J.C. No. 11787 of 1999, marked as Ext.-A/2.

7. P.W.1 Abdul Rahman has stated in his cross-examination that the police and two officers had gone to the shop of the



complainant and caught hold him. He has further stated that when the police brought the complainant, large number of people had assembled there. This witness has further stated in his cross-examination that he had asked the complainant what was the matter then the complainant had replied that the Circle Officer had hit him with slap. This witness has also stated that after assaulting the complainant with slap, the accused persons went away.

8. P.W.2 Mehdi Imam is the complainant himself. He has stated in his cross-examination that he had filed writ application before this Court and order was passed with a direction to accused Nazir Ahmad to reconstruct the demolished shop of the complainant and also to pay him Rs.25,000/- as compensation. He has admitted that in view of reconstruction of his shop and deposit of cheque of Rs.25,000/- by the respondents, the writ application was disposed of. This witness has admitted in his cross-examination that he had not informed the writ Court regarding the occurrence of assault upon him by the accused persons. He has stated that his house and the house of the Circle Officer are situated in the same Mohalla. The occurrence had taken place for about half an hour. He had not sent any one to the Police Station.

9. P.W.3 Manisur Rahman has stated himself to be working as an advocate at Araria civil court. He has stated in his cross-

examination that he had come to depose in this case on the request of the complainant. He has further stated that he used to live on the second floor of the lodge of the complainant during the period of his study and competition. He has stated that the complainant had told him that the name of accused is Nazir Ahmad.

10. After taking into consideration the evidence led by the complainant's witnesses, the trial court came to the conclusion that the complainant has miserably failed to establish the charges leveled against the accused persons beyond the shadow of all reasonable doubts and acquitted them of all the charges leveled against them.

11. I have heard learned counsel for the petitioner and perused the record.

12. The trial Magistrate while passing the impugned judgment acquitting the accused persons has given his findings after appreciating the evidence adduced on behalf of the parties as under :

“Heard the submissions of learned counsels for both the parties and after perusal of the evidence of the witnesses of both the sides and considering the other circumstances I find that the evidences adduced by the complainant do not support the case of the complainant and there is great contradictions in the evidences of the witnesses of the complainant such as P.W.1 who is said to be the witness of the occurrence which took place at the shop. In his examination in chief he has stated that at that time a Jeep came in which there were six police and three officers. The police persons after coming down from the Jeep went to the Garrage of Mehdi Imam and caught him and brought near the Jeep. But he has

stated in his cross examination that police force and two officers came down and went to the shop of Mehdi Imam while it has been narrated in the complaint petition that all the accused persons armed force, some goondas armed with lathi rushed into the shop of the complainant with a view to assault him. Here there is great contradictions between the examination in chief and cross examination of this witness which does not corroborates the facts stated in the complaint petition. He has further stated in his examination-in-chief that when Mehdi Hassan came near the Jeep the officers who were present on the road caught the collar and asked him to sign on the paper then Mehdi Imam refused to sign on the paper. Then they assaulted with slaps. But he has stated in his cross-examination that he has seen the person who had assaulted with slaps. He has not stated the name of any one specifically. But he has stated in para 31 that he had asked Mehdi Mian what was the matter then he had stated that Circle Officer had assaulted him a slap. In para 24 he has stated that the police force had brought Mehdi Imam after catching him. A large persons had gathered there then he too had went there. Thus the evidence of this witness makes the entire occurrence doubtful which does not corroborate the complaint case at any rate. P.W.2, Mehdi Imam, the complainant of this case himself has stated in his examination in chief that Nazir Ahmad C.O. Krishna Singh, Rameshwar C.I. Singh, Karamchari and sic police forces came from Jeep and entered into the shop but- in para 9 of his cross examination stated that after stopping the Jeep, rifle party, Lathi party, Circle Inspector, Karamchari came to him and he has also stated that first of all police force came to him and entered into the shop and made GHOOSA GHOOSI with him. Here there is great contradictions that in this cross examination the name of Nazir Ahmad is not in among those who entered into the shop. This witness has not stated the matter of GHOOSA GHOOSI made by the aforesaid accused persons in his examination in chief and complaint petition. He has also stated in his examination in chief that all the accused persons



said to the police force that this is Mehdi Mistry catch him and take away him but further he has stated that aforesaid fact was stated by Ramashankar Singh, Krishna Singh and both of the aforesaid persons pushed him on the gate while in his complaint petition has described about identification of complaint by Nazir Ahmad, Krishna Singh to armed force and pushed by Rameshwar Singh. Here there is great contradiction which does not corroborate the fact stated in the complaint petition. According to the complaint petition it has been stated by Nazir Ahmad that “Sala Kabil bante ho Rs.25,000/- chahiye” – but non of the witness has deposed in his evidence like such. Thus, on one place the complainant has stated that all the accused persons entered into his shop but on the other place he has stated that the complainant was brought by two officers along with armed force before the Circle Officer. Here there is highly contradiction in the evidence of the witness. So the question of entrance of the accused Nazir Ahmad into the shop does not arise. The complainant has stated in his evidence on one place that he has gone to the Police station whereon the aforesaid accused were already sitting there and the Daroga refused to register the case. He has also stated that he has not sent any one to the police station. Here there is also highly contradiction in the evidence of the complainant. Thus, such type of evidence adduced by the complainant makes the entire occurrence doubtful. P.W.3 is Manishur Rahman who has stated about the residence of the complainant situated at Sultanganj. He has also deposed in his examination in chief that the accused persons entered into the house of the complainant and were searching the complainant and abused him. But no other evidence has deposed. He has stated in his evidence that the complainant had told him to depose in the case so he has come to depose. He has stated in para 8 that during his study and competition he used to live in the lodge of Mehdi Mian situated at Sultanganj. Thus it appears that this witness is the interested witness of the complainant. So his evidence cannot be reliable. Neither the evidence of this witness supported the

fact stated in the complaint petition nor supported any of the occurrence which took place at the residence of the complainant situated at Sultanganj.

Some documents have been produced by the defence, which have been marked as Ext.A, Ext.A/1, Ext.A/2 respectively. From perusal of the aforesaid exhibits it appears that there was some dispute between both the parties. Regarding aforesaid shops Ext.A is the order dated 15.04.13 passed by Hon'ble High Court in Cr.Misc. No.30888/2008 Nazir Ahmad Versus State of Bihar and others. In the said order petitioners were directed to raise all points before the trial court which shall be considered by it while deciding the case. Application is disposed of with aforesaid observation and direction. From perusal of Ext.A/1, Ext.A/2, it appears that Hon'ble High Court has been pleased to pass order dated 14.01.2000 that in that view of the matter Hon'ble High Court directed respondent no.8 to rebuilt without roof of the suit shop premises which has been demolished by him with the use of force within a period of seven days from today. Hon'ble High Court further directed the State to pay the petitioner an amount of Rs.25,000/- by way of compensation for this loss of business and on that date the state must come with cheque of aforesaid amount in the name of the petitioner. Lastly, on 16.03.2000 an order was passed by the Hon'ble High Court. Learned AAG III is also handed over a cheque of Rs.25,000/- drawing in favour of the Writ petitioner. The said cheque made over to Learned Counsel for the petitioner in court. After complying the direction of Hon'ble High Court contained in order dated 14.1.2000 an order was passed by the Hon'ble High Court on 24.03.2000 and the Writ petition was disposed of. Therefore, it is to be noted that in C.W.J.C. no.11787/99 some directions were given to comply the order dated 14.01.2000 which was effected to reconstruct the removed shop of the complainant and compensate him for Rs.25,000/-. In the meantime, this case has been filed by the complainant while final order was passed in C.W.J.C. 11787/1999 on 23.03.2000 much after alleged date of occurrence. But the complainant has



not given any information regarding the present case to the Hon'ble High Court. So it is clear that the complainant has filed this false case knowingly and intentionally against the accused persons due to previous enmity. The complainant has not produced any other witness except the aforesaid three witnesses nor he has examined even his wife and daughter in support of his case regarding whom the complainant has stated to be misbehaved, while examination of his wife and daughter was necessary to prove this case. Thus the complainant has miserably failed to prove his case. There is highly contradiction in the evidence of witnesses which does not corroborate to each other.

Therefore such evidence given by the complainant witnesses makes only doubtful reliability of their evidence but also entire occurrence has become doubtful. None of the complainant's witness has fully supported the occurrence as described in the complaint petition.

Under the above discussions I come to the conclusion that the complainant has miserably failed to establish the charges leveled against the accused persons beyond the shadows of all reasonable doubts. Therefore the accused persons are entitled to be acquitted after getting the benefit of doubt. Therefore, under the aforesaid circumstances, I find and hold that all aforesaid accused persons are not guilty of any offence and hence they are also acquitted in this case and they are discharged from the liabilities of their bail bonds and they are also set at liberty."

13. The reasonings assigned by the learned Magistrate are neither erroneous nor perverse. It is settled law that in a criminal case the prosecution has to prove its case beyond all reasonable doubts. Once a doubt is created in the mind of the court, the benefit has to go to the accused.

14. In view of so many contradictions and anomalies in the evidence led by the complainant as noticed by the trial Magistrate if an order of acquittal has been passed in respect of minor offences under Sections 323, 506 and 452 of the IPC, no illegality can be found with the judgment.

15. Regard being had to the evidence on record, I see no merit in this application preferred under Section 378(4) of the Cr.P.C. seeking leave to appeal against the impugned judgment of acquittal. Accordingly, the application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	----
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