

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.41783 of 2014

Arising Out of PS. Case No.-111 Year-1986 Thana- SARAN COMPLAINT CASE District- Saran

Janardan Singh Sigriwal Son of Late Nageshwar Singh Resident of village Mishrawalia Tola, P.O.+ Police Station- Jalalpur, District- Saran.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Tripurari Saran Singh son of late Ram Nath Prasad, village-Amnaur, P.S. Amnaur, Distt. Saran.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sarva Deo Singh, Adv.
For the Opposite Party/s : Mr. S.DAYAL(APP)

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 24-01-2018

This application under Section 482 of the Code of Criminal Procedure has been filed to quash the Bhagwan Bazar (Chapra) P. S. Case no. 46 of 1986 dated 04.04.1986 arising out of Complaint Case No. C-111 of 1986 under Sections 147, 148, 448 and 380 of the Indian Penal Code as well as entire proceeding of Trial No. 322 of 1993 as far as same relates to petitioner.

Briefly stated facts of the case is that complainant Tripurari Sharan Singh had filed a complaint petition which was registered as Complaint Case No. 111 of 1986 under Sections 147, 148, 448 and 380 of the Indian Penal Code in which altogether nine persons



were made accused and name of the petitioner is at serial no. 8. According to the complaint petition filed by the complainant, accused no. 1 is Ravindra Singh and accused no. 2 is Harendra Singh.

As per complaint petition complainant had purchased one house with land comprising one kattha eight dhoors of land by a registered sale deed on 20.12.1984 from Sri Narayanji Prasad after paying consideration amount of Rs. 40,000/- and he was put in possession over the land and house. Sale deed was executed in favour of wife of the complainant. The complainant along with his family members resided on the upper floor of the house and used to run his office from there. The ground floor of the house was given to Shambhu Nath Prasad on 01.04.1985 who had a licence to run liquor shop for one year. Shambhu Prasad had given some share of liquor trade to Kailash Singh and accused Ravindra Singh, who is relative of Kailash Singh, came there to help Kailash Singh. In the said liquor shop Tarkeshwar Prasad and Ramji Pd. Gupta were authorised retailers appointed by Shambhu Nath Prasad.

Subsequently, the accused persons removed the persons employed by Shambhu Nath Prasad and occupied the east portion of first floor. The licensee Shambhu Nath Prasad and Ravindra Singh always used to quarrel. Therefore, complainant refused to



give on rent the liquor shop on account of frequent quarrel between Kailash Singh and Shambhu Nath Prasad. The liquor shop was also closed and for the year 1986-87 the licence of liquor shop was granted to some other person. As the liquor shop was closed and complainant also did not want to give Shambhu Nath Prasad his shop on rent, Shambhu Nath Prasad on 25.03.1986 vacated the portion of shop which was in his possession and complainant put his lock on the portion vacated by Shambhu Prasad.

On the same night accused persons tried to make forcible entry along with antisocial elements and tried to take forcible possession over the portion which was vacated by Shambhu Nath Prasad but local police was informed and soon police reached there, removed the antisocial elements and complainant was given possession of that portion again with the help of police. Police force was also deployed so that peace could be maintained there and also sent a report to the S.D.O. for initiation of 144 proceeding.

On the alleged date of occurrence accused No. 1 Ravindra Singh variously armed with other accused persons came to the house of complainant and tried to break open the lock, complainant gave a written complaint to Officer-in-Charge of



Bhagwan Bazar Police Station but police reached there late and meanwhile accused persons took forcible possession after breaking open the lock over east facing two rooms and when complainant wanted to stop them, they assaulted him and took possession over the two rooms which are in their unlawful possession. In the remaining two rooms complainant is in possession and same is locked by complainant. It has further been alleged that many articles of complainant, which were kept in the room, were taken away by the accused. It has further been stated that the accused are very influential persons and accused Ravindra Singh is a convict under Section 302 of the Indian Penal Code. Lastly, it has been stated that forcible dispossession of the part of the house was illegal and unlawful and as such they should be punished for the said offence and possession of the part of the house should be restored to the complainant.

It has been submitted by the learned counsel for the petitioner that petitioner was not aware of any such criminal proceeding in which he has also been made accused and for the first time came to know about such case, on 26.06.2014 when he received notice which was issued in Election Petition No. 06 of 2014. It has further been contended that petitioner is a peace loving and law



abiding citizen and had contested Assembly Election for the first time in 1995 and, thereafter, in February 2000 Assembly Election from Jalalpur constituency in the district of Saran, he was elected MLA for the first time and thereafter in general election held in November, 2005 he was elected MLA and he was inducted in the State Cabinet as Minister for Sports and Culture.

It has further been submitted that in general election of State Assembly of 2010 he was elected as MLA and inducted in the State Cabinet as Labour Minister. He was elected as Member of Parliament from Maharajganj Parliamentary Constituency in the general election of the year 2014.

Shri Prabhunath Singh, who lost election in which petitioner was declared as elected, filed Election Petition No. 06 of 2014 for setting aside election of petitioner on the ground that he had suppressed the pendency of present criminal case in his nomination paper filed to contest the Parliamentary Election, 2014 from Maharajganj Parliamentary Constituency in Patna High Court.

Notices were issued to petitioner in the said election petition which was received by him on 26.06.2014 and on going through the said election petition, petitioner could know about pendency of the said criminal case. Annexure-7 of said election petition which



is an ordersheet, enclosed where it has been stated that petitioner is not appearing in the said criminal case and from order dated 01.09.1990 it appears that trial has been separated against other four persons except petitioner and one Premchand Prasad.

Petitioner had obtained the certified copy of Trial No. 322 of 1993 on 24.07.2014 from which it appears that separate Trial number was registered since 01.09.1990 and same was closed on 15.12.1993 observing that there is no hope that accused persons will turn up for trial and records were directed to be transferred in the record room. It has further been submitted that from perusal of orders since 01.09.1990, it is apparent that no notice either in the form of summon or warrant had been served upon petitioner, as such petitioner was not aware about the pendency of said criminal case. From reading of complaint petition it also appears that there is no allegation of any overt act against the petitioner and except name of the petitioner being arrayed in accused column there is nothing against petitioner in the complaint petition. The main allegation is against Ravindra Singh and Harendra Singh, against whom separate trial commenced being Trial No. 91 of 1992 including four other accused persons. During trial witnesses have been examined, namely, Shambhu Nath Prasad as P.W.1, Bhagwan Mahto as P.W.2 and Tripurari Sharan Singh, the complainant.



After conclusion of trial all the accused have been acquitted by judgment and order dated 25.03.1992. It has been submitted that in deposition made in the trial court by the witnesses in Trial No. 91 of 1992, nothing has been stated against the petitioner and the trial court has acquitted all those against whom there were specific allegation of committing overt act.

It has further been submitted that petitioner is a respectable member of the society and is a peace loving and law abiding citizen and has clean antecedent and no criminal case is pending against him other than the alleged present case. In this case notices were issued to complainant-opposite party no. 2 by order dated 28.08.2017 but from the report of the process server it appears that complainant-opposite party no. 2 has died. Learned counsel for the State, who was heard, has opposed the prayer of the petitioner. Case was finally heard on 17.11.2017 and after hearing learned counsel for the petitioner and learned counsel for the State, the order was reserved. However, before the order could be pronounced, an affidavit by one Jitendra Kumar Singh was filed on 16.01.2018 claiming himself to be petitioner in Cr. W.J.C. No. 545 of 2016 which has been filed for execution of warrant of arrest against petitioner. He claims himself to be a public spirited person and was shocked and dismayed to know that his



representative is involved in a criminal case which he has suppressed from public and his voters and has stated that in the present petition State is opposite party and deponent wants to assist the A.P.P. The deponent has no locus standi in this case as such no cognizance is taken of such affidavit.

After going through the contents of complaint petition, this Court finds that there is no specific allegation against petitioner of any overt act and except his name being arrayed in the accused column, no allegation against him is made in the entire complaint petition.

The Apex Court in paras-9 and 10 of the case ***Neelu Chopra and another vs. Bharti*** since reported in ***(2009) 10 SCC 184*** has held that,

“ 9. In order to lodge a proper complaint, mere mention of the sections and the language of those sections is not the be all and end all of the matter. What is required to be brought to the notice of the court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence.

10. When we see the complaint, the complaint is sadly vague. It does not show as to which accused has committed what offence and what is the exact role played by these appellants in the commission of offence. There could be said something against Rajesh, as the allegations are made against him more precisely but he is no more and has already expired. Under such circumstances, it would be an abuse of the process of law to allow the prosecution to continue against the aged parents of Rajesh, the present appellants herein, on the basis of a vague and general complaint which is silent about the precise acts of the appellants.”



There is nothing on record to suggest that notice in the form of summon or warrant was served upon petitioner so that he could have known about this present case. It further appears from the contents of the complaint petition that the dispute appears to be a tenancy dispute regarding possession/dispossession over a portion of house which was given on rent and there being claim and counter claim and proceeding under Section 144 of the Code of Criminal Procedure was also initiated with respect to possession over portion of the demised premises. It has also come on record that accused persons against whom there is specific allegation of committing overt act have been acquitted by the trial court. From the records of this case it appears that informant-opposite party no. 2 (now deceased) was examined by Trial Court as CW1 on 25.3.1992 and in his deposition he has stated that case has been compromised between the parties and he voluntarily and willingly has accepted the compromise and has filed compromise petition with his and his pleaders signature. He has not supported the case of prosecution. In his cross-examination he has stated that dispute with respect to portion of house was with Ravindra Singh (accused no.1) and same has been amicably resolved by Panchayati and he has compromised the case and does not want to proceed further in this case.



The learned trial court by its judgment and order of acquittal dated 25.3.1992 has recorded in its order that the case has been amicably settled between the parties and they have filed a joint compromise petition but charge under Section 448 of the Indian Penal Code is only compoundable whereas other charges under Sections 380, 147, 148 of the Indian Penal Code are not compoundable as such compromise under Section 448 of the Indian Penal Code was accepted and since no witnesses were examined on behalf of prosecution and those examined have turned hostile and informant himself has not supported the prosecution case and case being compromised between the parties and good relations were restored. The accused were acquitted by the trial court.

Learned counsel for the petitioner has placed reliance on a decision rendered by the Apex Court in the case of ***R. Kalyani v. Janak C. Mehta and others*** since reported in ***(2009) 1 Supreme Court Cases 516*** para-10 of which is extracted below:-

“10. In Hamida v. Rashid³ this Court opined: (SCC p. 478, para 6) “6. We are in agreement with the contention advanced on behalf of the complainant appellant. Section 482 CrPC saves the inherent powers of the High Court and its language is quite explicit when it says that nothing in the Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice. A procedural code, however exhaustive, cannot expressly provide for all time to come against all the cases or points that may possibly arise, and in order that justice may not suffer, it is necessary that every court



must in proper cases exercise its inherent power for the ends of justice or for the purpose of carrying out the other provisions of the Code. It is well-established principle that every court has inherent power to act ex debito justitiae to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the court."

Learned counsel has also placed reliance on a decision of the Apex Court in the case of ***Vineet Kumar vs. State of Uttar Pradesh*** reported in **2017 (0) AIJEL-SC 60035** para-21 is extracted below:-

7.....In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

After considering submissions of both parties and materials available on record, continuance of present proceeding against petitioner will amount to abuse of process of Court and to secure the ends of justice Bhagwan Bazar P. S. Case no. 46 of 1986 dated 04.04.1986 arising out of Complaint Case No. 111 of 1986, Trial



No. 322 of 1993 and the whole proceeding arising out of said case
is quashed as far as same relates to petitioner.

Petition stands allowed.

(S. Kumar, J)

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AFR/NAFR	
CAV DATE	NA
Uploading Date	
Transmission Date	

