

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.902 of 2019

Arising Out of PS. Case No.-351 Year-2017 Thana- COMPLAINT CASE District- Supaul

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YOGENDRA PASWAN, Male, aged about 36 years, Son of Madhuri Prasad
Resident of Chakla Nirmali, Ward no.-06, P.S.- Supaul, District - Supaul

... .. Appellant/s

Versus

1. The State of Bihar
2. Ramesh Kumar Singh Son of Gajendra Narayan Singh Present Circle Officer, Pipra cum Circle Officer, Supaul. Resident of C Sonpura, P.S.- Bakhtiyarpur, District - Saharsa
3. Manoranjan Tajak Son of Dasharath Rajak Resident of Chakla Nirmali, Ward No. -07, P.S.- Supaul, District - Supaul

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Arun Mr. Sanjay Kumar @ S. K. Mr. Agreya Pratap
For the Respondent/s	:	Mr. Sadanand Paswan-S.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 23-04-2019 Heard learned counsel for the appellant as well as
learned Special Public Prosecutor.

Instant appeal has been filed in accordance with
Section 14A of the SC/ST (Prevention of Atrocities) Act against
an order dated 28.11.2018, whereby and whereunder the learned
Special Court of SC/ST has dismissed the Complaint Case
No.351C of 2017 filed by the appellant, under Section 203 of
the Cr.P.C.

It has been submitted at the end of the learned counsel
for the appellant that irrespective of the fact that there happens



to be an admission at the end of the appellant to have his Tea Stall, beetle shop over Government land, but could not give an opportunity to the proposed accused, who are none else than a Circle Officer as well as another is the co-villager of the appellant and at whose behest, C.O. has acted malafidely, abused and dismantled the structure and by such activity caused wrongful loss to the appellant. It has also been submitted that at the present moment only a prima facie case has to be seen which from the evidence available on the record is found duly substantiated. That being so, the order impugned is fit to be set aside.

On the other hand, learned Special Public Prosecutor while supporting the finding recorded by the learned lower Court has submitted that after going through the order impugned, it is evident that whole prosecution happens to be malicious one. Consequent thereupon, the learned lower Court has rightly dismissed the complaint petition.

For an occurrence dated 16.03.2017, a complaint was filed on 30.03.2017 disclosing therein that in order to earn his livelihood, the complainant has a Tea Stall in front of his house. On the date of occurrence, both the accused came, scolded and then, said that on account of erection of the structure,



Manoranjan Razak, proposed accused no.2 is feeling aggrieved by and so, he should remove the structure. Furthermore, they abused, assaulted. On hue and cry, villagers including his aunt Ravia came and on her protest, proposed accused no.1, the C.O. used defamatory, derogatory words and then, also assaulted. Proposed accused no.2, a co-villager, dismantled the articles having kept inside the shop including glass, utensils etc. causing loss to a tune of Rs.1500/-. He has also taken Rs.150/- from the cash box. It has further been alleged that on the following day, accused came along with police party and dismantled the whole structure as a result of which, he sustained loss of Rs.40,000/-. Also got cash appertaining to Rs.5,000/-, ornaments, cloth looted away. On protest by the villagers, proposed accused no.1, the C.O. admitted his guilt and further, assured that he is going to compensate the same. As he failed on account thereof, this case has been instituted.

The whole events that means to say, after examination of the appellant on S.A. as well as respective witnesses, the allegation has been reiterated, but on court query, they have exposed the real fact and that has been perceived by the learned lower Court which happens to be the basis for dismissal of the complaint petition. They all fairly admitted that at an earlier



occasion, notices were issued for removal of the encroachments to all the incroachers including appellant, which was received by the complainant whereby and whereunder he was directed to remove the encroachment from the government land, but they had not removed, whereupon the concerned officials removed them from the government land and then thereafter, this case has been instituted.

At the present moment, the learned counsel has got merit in his submission that only prima facie case has to be seen for the purpose of taking cognizance. Side by side, there also happens to be judicial clutch over the prosecution and by such clutch, there happens to be rule of caution to the effect that unscrupulous litigants should not be allowed to misuse the process of the Court, whereupon it has been observed that irrespective of finding of the Court that a prima facie case is subsisting, the order of cognizance is fit to be quashed. The ***State of Hariyana & Ors. Versus Bhajan Lal & Ors., AIR 1992 SC 604***, the Hon'ble Apex Court has identified following categories including others wherein prosecution can be quashed and those are :-

*“(1) Where the allegations
made in the first information report
or the complaint, even if they are*



taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, on investigation is permitted by a police officer without an order of a Magistrate as



contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient grounds for proceedings against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceedings is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

Apart from this, from the statement of the witnesses,



it is evident that proposed accused no.1 happens to be a government servant and further, his activity in the background of subsequent exposure is found by way of performance of his official duty and that being so, the requirement of sanction in accordance with Section 197 of the Cr.P.C. was very much essential. Furthermore, from the complaint, it is evident that occurrence has been shown to have committed in two different dates, but from the column of the complaint petition, it is evident that complainant has shown the date of occurrence only as 16.03.2017 is a another circumstance, which speaks a lot, more particularly, in the background of the activity having been admitted at the end of appellant.

Consequent thereupon, the order impugned needs no interference. Accordingly, memo of appeal is rejected.

(Aditya Kumar Trivedi, J)

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