

Patna High Court - Orders

Pandit Awadhesh Kumar & Ors vs State Of Bihar on 24 October, 2011

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.11574 of 2008

1. Pandit Awadhesh Kumar, son of Sri Kedar Nath.
2. Chandan Kumar.
3. Kundan Kumar.
4. Nandan Kumar.

All sons of Pandit Awadhesh Kumar.

All residents of Mohalla-Bind Toli, P.S. Ara Town, in
the district of Bhojpur.

.....Petitioners.

Versus

1. The State Of Bihar.
 2. Munilal Sah, son of Yadubansh Sah, resident of
village-Dhangai, P.S. Bikramganj, District-Rohtas.
-Opposite Parties.

For the Petitioners : Mr. Ravindra Kumar, Advocate. For the State : Mr. Hirday Prasad Singh, A.P.P.
For O.P. No.2 : Mr. Ajeet Kumar, Advocate.

12. 24.10.2011. The petitioners have approached this Court, under Section 482 of the Code of Criminal Procedure, for quashing the order dated 12.11.2007 passed by the court of Sri V. Kumar, Judicial Magistrate, First Class, Ara, in Ara (Town) P.S. Case No.295 of 2005, taking cognizance of the offence under Sections 341 and 323/34 of the Indian Penal Code and Sections 25(1-B)A, 26/35 of the Arms Act against the accused-petitioners.

2. In brief, the fact, leading to this application is that on the basis of the written report of the informant- opposite party no.2, Munilal Sah, who is reported to be dead, Ara (Town) P.S. Case No.295 of 2005 was instituted on 12.12.2005 under Sections 341, 323 and 379 of the Indian Penal Code against the accused- petitioners alleging that on 12.12.2005 he had gone to Phinopolice Ramna Road in connection with the work of share of Syndicate Bank, where his Munshi met him and informed that his Samadhi, petitioner no.1, Pandit Awadhesh Kumar, with whom litigation was going on, arising out of Bikramganj Police Station Case No.19 of 2004, has asked to talk of compromise for the aforesaid case. Thereafter, he alongwith his Munshi went to the house of the accused-petitioner no.1, then the accused- petitioner no.1 started abusing and assaulted him through fists and with intention to kill surrounded him and locked him in a room. Thereafter, all the accused- petitioners brutally assaulted him and snatched cash Rs.25,000/- , golden chain, wrist watch, share papers etc. from him. At that time, accused-petitioner no.1 kept old country made pistol in his waist and cartridges in his hand and with the help of villagers, handed over to the police.

3. After investigation, the police submitted the chargesheet against the accused-petitioners under Sections 341 and 323/34 of the Indian Penal Code and Sections 25(1-B)A, 26/35 of the Arms Act in the court of the Chief Judicial Magistrate, Ara, and, thereafter, the learned Judicial Magistrate took the cognizance of the offence under the aforesaid Sections on perusal of the chargesheet and the case diary against the accused- petitioners through the impugned order dated 12.11.2007.

4. Learned counsel for the petitioners submits that the informant-opposite party no.2, Munilal Sah, who was the Samdhi of the accused-petitioner no.1, Pandit Awadhesh Kumar, was the named accused in Bikramganj P.S. Case No.19 of 2004, lodged for the offence under Section 304-B and other allied Sections of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act, for causing the death of the daughter of accused-petitioner no.1, due to non fulfillment of dowry demand. The said case is pending in the court of Fast Track Court-II, Sasaram, for framing of the charge. The informant-opposite party no.2 and his family members, named accused of that case, were pressurizing the accused-petitioners to compromise the case as the son of the informant-opposite party no.2 is still in jail. It has also been submitted that from the side of the informant- opposite party no.2, a case bearing Bikramganj P.S. Case No.69 of 2004 was lodged against the accused- petitioners in which final forms were submitted. On the alleged date of occurrence, the informant-opposite party no.2 alongwith 6-7 miscreants, all of sudden, rushed at the house of the accused-petitioners and tried to terrorize the accused-petitioners to compromise the dowry death case on the point of pistol but with the help of villagers, the informant-opposite party no.2 was handed over to the police with firearm regarding which Ara (Town) P.S. Case No.294 of 2005 was instituted by the police, which would appear from Annexure-'5' to this application and only with a view to take revenge to the accused- petitioners, in collusion with the police, the present case has been filed by the informant-opposite party no.2 against the accused-petitioners.

5. From perusal of the F.I.R., it appears that the allegation of the informant-opposite party no.2 is that on the alleged date of occurrence, on sending information, he was called by the accused-petitioner no.1 for talking about the compromise of the case related to Bikramganj P.S. Case No.19 of 2004 and on reaching there, the informant-opposite party no.2 was brutally assaulted by the accused-petitioners and the accused-petitioner no.1, forcibly kept the old country made pistol in his waist and cartridges in his hand and handed over him to police.

6. The impugned order goes to show that the learned Magistrate on perusal of the chargesheet arrived at the conclusion that prima facie the case for offence under Sections 341 and 323/34 of the Indian Penal Code and Sections 25(1-B)A, 26/35 of the Arms Act is made out against the accused-petitioners and, accordingly, took the cognizance of the offence under the aforesaid Sections through the impugned order dated 12.11.2007.

At the time of taking cognizance, the Magistrate/court is only required to see whether on perusal of the F.I.R. and the case diary, prima facie, case is made out or not. At that time, the Magistrate/court could look into the defence.

7. Under the aforesaid facts and the circumstances of the case, I do not find that the impugned order suffers from any illegality for interference with the same in inherent jurisdiction under Section 482

of the Code of Criminal Procedure.

8. Accordingly, this application stands dismissed. However, it is made clear that the petitioners would be at liberty to raise all the points, raised herein, at the appropriate stage in the court below.

(Rajendra Kumar Mishra, J) P.S.