

Patna High Court

Indu Shekher Singh And Ors. vs State Of Bihar And Anr. on 20 November, 2007

Equivalent citations: 2008 (56) BLJR 395

Author: S M Alam

Bench: S M Alam

JUDGMENT

Syed Md. Mahfooz Alam, J.

Page 0396

1. This is an application for quashing of the entire criminal proceeding in Complaint Case No. 2868 (C) of 2005 including the order dated 4.10.2005 passed by the Chief Judicial Magistrate, Patna and the order dated 9.12.2005 passed by the Sub-Divisional Judicial Magistrate, Patna whereby the learned Sub-Divisional Judicial Magistrate has taken cognizance of the offence under Sections 116, 420, 166 and 167 of the Indian Penal Code and Section 15 of the Environment (Protection) Act, 1986 (in short, "the Act") and summoned the petitioners for facing trial for the abovesaid offences.

2. The brief facts of the case, are as follows:

One Satish Singh, a resident of Mohalla Prakash Nagar, Khagaul Road within Phulwarisharif Police Station, Patna filed a complaint alleging therein that he along with his family members resides in his residential house at Prakash Nagar, Naya Tola, and the accused persons who are office bearers of the Bihar State Pollution Control Board, Patna (in short, "the Board") have unauthorisedly issued environment clearance certificate for establishing a Rolling Mill near the residential house of the complainant in utter violation of the provisions of the Environment (Protection) Act, 1986. According to the complaint petition, the power to issue environment clearance certificate vests in the Secretary, Environment & Forest Department, Government of Bihar and not to the authority of the State Pollution Control Board. It has also been alleged that the accused persons (petitioners) have issued the said certificate. It is said that the action of the accused persons was mala fide and fraudulent. It is further alleged that due to illegal act of the accused persons, there is always apprehension of inhaling poisonous gas by the complainant and his family members.

Page 0397

3. It appears that after filing of the complaint in the court of the Chief Judicial Magistrate, Patna, the learned C.J.M. transferred the complaint case to the Court of the Sub-Divisional Judicial Magistrate, Patna under the provisions of Section 192 of the Code of Criminal Procedure. Thereafter the learned S.D.J.M. held enquiry and by impugned order dated 9.12.2005 took cognizance of the offence, as mentioned above and summoned the petitioners to face trial.

4. The learned Advocate appearing on behalf of the petitioners submitted that the learned Sub-Divisional Judicial Magistrate has passed the said order without applying his judicial mind and the said order which is under challenge cannot be said to be a judicial order passed by a Judicial Officer after giving full thought on the materials available on record. The learned Advocate further submitted that the said order has been passed in mechanical manner without applying the judicial mind. He submitted that under the provisions of Section 19 of the Act, the learned Sub-Divisional Judicial Magistrate was not empowered to take cognizance under the Act on a private complaint. He has further submitted that the impugned order is perverse and as such, the same should be set aside.

5. In order to come to the correct decision, I would like to refer certain provisions of the Act. Sections 4, 18 and 19 of the Act are relevant in this regard. According to Section 4 of the Act, the Central Government has authority to appoint officers under the Act and entrust them such powers and functions as the Central

Government may deem fit. Thus, Section 4 of the Act establishes beyond doubt that the officers appointed under the Act are the officers appointed by the Central Government. Section 18 of the Act lays down that no suit, prosecution or other legal proceeding shall lie against the officers and employees appointed by the Government in respect of anything which is done or intended to be done in good faith in pursuance of this Act or Rules made or directions issued under the Act. Thus, Section 18 of the Act debars the court from taking any legal action against the officers / employees appointed under the Act in respect of anything done in good faith in pursuance of the Act. Section 19 is more clear and has ousted the jurisdiction of the criminal court from taking cognizance of any offence under this Act on a private complaint. Since Section 19 of the Act is very relevant in this case, the same is quoted below.

Cognizance of the offences - No court shall take cognizance of any offence under this Act except on a complaint made by -

- (a) the Central Government or any authority or officer authorized in this behalf by that Government; or
- (b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorized as aforesaid.

6. From the wordings of Section 19 of the Act it is clear that the Section is mandatory and it lays down that a private person aggrieved by any action of the officers appointed under the Act is not entitled to file complaint before any court unless he has given notice of such complaint to the Central Government or to the proper authority 60 days prior to filing of the complaint.

7. From the complaint petition or from the impugned order there is nothing on record to come to the conclusion that prior to filing of the complaint the complainant had Page 0398 given notice of filing the complaint to the Central Government or to the proper authority but while passing the impugned order the learned Sub-Divisional Judicial Magistrate did not consider the above provision of law and without going through the provision of the Act passed the impugned order mechanically. The said order is cryptic, vague and cannot be said to be a judicial order and does not speak as to how the grant of environment clearance certificate by the petitioners had caused injury to the complainant and what provision of the Act was violated by the petitioners. I, therefore, feel no difficulty in holding that the impugned order is perverse and has been passed by the learned Sub-Divisional Judicial Magistrate without applying his judicial mind and so there is need to interfere with the impugned order.

8. In the result, I find merit in this application for quashing and as such, the same is allowed and the impugned order dated 9.12.2005 whereby the learned Sub-Divisional Judicial Magistrate has taken cognizance against the petitioners in Complaint Case No. 2868 (c) of 2005 is set aside and further proceeding in Complaint Case No. 2868 (c) of 2005 against the petitioners is ordered to be dropped.