

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 18811 of 2013

Arising Out of PS.Case No. -473 Year- 2012 Thana -PATNA COMPLAINT CASE District-
PATNA

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Ajay Kumar Singh, Son of Ganesh Singh, Resident of 7C/4, West
Anandpuri, Patna P.S.-Srikrishnapuri, Distt.-Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Sanjay Kuamr S/O Ramnaresh Upadhaya, Resident of Janshakti
Colony, Road, No. 24, Rajeev Nagar, P.O.-Keshri Nagar, Patna-24.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL ORDER

6 23-07-2015

Heard learned counsel for the petitioner,
learned A.P.P. for the State and learned counsel for the
opposite party no. 2.

The present application under Section 482 of
the Code of Criminal Procedure, 1973 (hereinafter referred to
as the 'Code') seeks quashing of the order dated 10.10.2012
passed in Complaint Case No. 473C of 2012 by which the
Judicial Magistrate, Ist Class, Danapur has taken cognizance
of offences under Sections 420 and 506 of the Indian Penal
Code against the petitioner and another person and has
directed for issuance of process.

The allegation against the petitioner was
that he not being the Secretary of a Co-operative Society at the
relevant time had executed a sale deed in favour of another
person claiming to be the Secretary of the Co-operative Society

and further that the said land had earlier been registered in favour of the maternal grand aunt of the opposite party no. 2, who was also holding power of attorney for the said land executed by one of the sons of the original purchaser.

Learned counsel for the petitioner submits that initially a complaint case was referred by the Court to the police for investigation pursuant to which Rupaspur P.S. Case No. 147 of 2011 was registered in which the police after completing the investigation had submitted final form holding the issue to be a property dispute. However, the complainant (opposite party no. 2) filed a protest petition under Section 200 of the Code and after taking evidence the Court was pleased to take cognizance under Sections 420 and 506 of the Indian Penal Code and process was directed to be issued against the petitioner and one another person.

Learned counsel for the petitioner submits that taking of cognizance under the said section is misconceived since none of the ingredients of section 420 or 506 of the Indian Penal Code is made out. Though, learned counsel has taken the Court through the allegations made in the complaint followed by the protest and the statement recorded by the Court, this Court does not feel the necessity to go into that in view of the learned counsel for the opposite party no. 2 fairly submitting that ingredients of section 420 of the Indian Penal Code is not made out against the petitioner. Thus, the Court is dealing with the submissions of learned



counsel for the petitioner only with regard to section 506 of the Indian Penal Code. Learned counsel submits that the offence is defined in section 503 of the Indian Penal Code relating to criminal intimidation and section 506 is the punishing section. It is submitted that section 503 specifically states that whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation. Learned counsel submits that in the initial complaint also there is no allegation with regard to the petitioner threatening the complainant which is specifically with regard to co-accused Sunil Singh of forcibly trying to fill the land. It is thus submitted that in absence of there being any allegation against the petitioner of making out or holding any threat in terms of section 503 of the Indian Penal Code to the complainant or any person in whom he may be interested, taking of cognizance under the said section by the Court below becomes untenable in the eyes of law.

Learned A.P.P. submits that from the materials on record taking of cognizance under sections 420 and 506 of the Indian Penal Code cannot be sustained as the allegations do not bring out any ingredients of the said section.



Learned counsel for the opposite party no. 2 submits that from the reading of the initial complaint it would be clear that the allegations were made under various sections including the ones under which the Court had taken cognizance and further that it was clearly stated that the other co-accused was working in connivance with the petitioner and thus he being the main perpetrator of the crime clearly has also to take responsibility and is liable for being proceeded for such criminal act which may have been done by the other co-accused, but was at the behest of the petitioner.

Learned counsel further submits that cognizance is taken of an offence and not any person and therefore taking of cognizance by the Court below is sufficient for the trial to proceed. It is submitted that Section 190 of the Code clearly provides for taking of cognizance and the Court has to only come to the conclusion that a cognizable offence has been committed. The further submission of learned counsel is that if the Court is considering the aspect as to whether ingredients under section 420 or 506 of the Indian Penal Code are made out, the Court should also independently look at the materials as to whether ingredients of offences under other sections are made out.

Upon considering the facts and circumstances of the case and submissions of learned counsel for the parties, this Court finds substance in the contention of learned counsel for the petitioner. The Court need not go into the



aspect as to whether cognizance under section 420 of the Indian Penal Code is made out since the parties are agreed that against the petitioner, the same is not made out. As far as section 506 of the Indian Penal Code is concerned, this Court is in agreement with what has been argued on behalf of the petitioner that the case against him cannot be made out under the said section because the defining section 503 of the Indian Penal Code clearly stipulates that the person charged has to be the one who threatens and in the present case neither from the initial complaint nor the subsequent protest nor from the depositions there is any whisper that it was the petitioner who had threatened the opposite party no. 2.

As far as the contention of learned counsel that the Court may apply its mind independently of what has been done by the Magistrate and look into the original complaint and other materials, there is no dispute with regard to such proposition that the Court does have powers to do so, but in the facts and circumstances of the present case, the issue, even if it is taken correct for the sake of argument, that the petitioner had no authority to execute any sale deed in favour of any person in the capacity of a Secretary of a Society which was non existent at that time, the documents clearly would be *non est* in the eyes of law and the only person aggrieved can be the beneficiary of the sale deed who had paid money/valuable consideration for getting the sale deed executed in his favour. Moreover, if any wrong has been committed by the



petitioner by claiming himself to be the Secretary of the non existing society under the Cooperative Act, it is the Officer of the department which can maintain a complaint and the opposite party no. 2 herein does not seem to have any cause of action moreso when there is evidence to show that the power of attorney which he claims to have received relating to the land of his maternal grand aunt, his maternal grand uncle i.e., the husband of the purchaser (his maternal grand aunt) in whose favour the initial sale deed was executed, upon application made by him has accepted and taken back the entire money way back on 25.07.1985. The contention of learned counsel for opposite party no. 2, at this stage, is that the husband of the original vendee giving a discharge of the property belonging to his wife is impermissible may be technically correct but when the husband has received the money back and handed over the plot in question, this Court cannot overlook the factual position where such transactions either on behalf of the husband or the wife are made by the husband since admittedly the wife did not have any independent source of income.

It would be relevant to indicate here that the contention of learned counsel for the opposite party no. 2 that cognizance is taken of an offence and not any person cannot be faulted but while applying his judicial mind or for the purposes of taking cognizance, to indicate as to what is the offence of which the Court is taking cognizance of, the Penal

section has to be quoted by the Magistrate so that it discloses proper application of mind. In the present case, this does not appear to have been done by the Magistrate.

Thus, this Court is not persuaded to exercise its inherent powers to independently apply its mind with regard to the original complaint made by the petitioner and is only restricting itself to consider the legality of the impugned order taking cognizance by the Court below under sections 420 and 506 of the Indian Penal Code. This Court in its considered opinion does not find the ingredients of sections 420 or 506 of the Indian Penal Code to be made out against the petitioner from the materials available before the Magistrate.

Accordingly, the order dated 10.10.2012 passed in Complaint Case No. 473C of 2012 by the Judicial Magistrate, Ist Class, Danapur taking cognizance under Sections 420 and 506 of the Indian Penal Code, as far as it relates to the petitioner, stands quashed.

The application stands disposed off.

However, this order shall not preclude the opposite party no. 2 from availing of the remedies available to him under the law.

(Ahsanuddin Amanullah, J.)

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