

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.932 of 2010

Arising Out of PS.Case No. -0 Year- null Thana -null District- SAMASTIPUR

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1. Lal Bahadur Mishra, S/O Late Rajendra Mishra, R/O Village- Bishanpur
Samthu, P.O.- Rampur Samthu, P.S.- Angarghat, Dist.- Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar,
2. Madhukar Kumar, S/O Shanti Prasad Singh, R/O Village- Baghwanpur Desua,
P.S.- Ujiayrpur, Dist.- Samastipur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Hemant Kumar Karn, Advocate
Mr. Pramod Kumar Pandey, Advocate

For the Opposite Party/s : Mr. S. S. Sabbar Hussain, APP
Mr. Shakti Suman Kumar, Advocate

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 20-03-2015

1. The Petitioner seeks quashing of the order of cognizance dated 24.02.2009 passed by the Judicial Magistrate, 1st class, Dalsingsarai, Samastipur, in T.R. No.845 of 2009 arising out of C.R. No.50 of 2009.

2. The case of the Complainant is that Petitioner was employed by him to run kerosene business but he committed defalcation and many irregularities in the account. When he confronted him, he was assaulted and abused.

3. It has been submitted on behalf of Petitioner that he is a co-villager, who runs a small shop of fertilizer in the name of Mishra Traders, whereas, the Complainant is a whole-sale trader of kerosene oil. The Complainant used to borrow money from him and



finally there was a due of about ₹four lac which he agreed to return. The Complainant then entered into an agreement on 14.11.2007 as per which he would give him a draft of ₹four lac. The Accused No.1 Amresh Jha was one of the witnesses in agreement. When the Complainant did not return ₹four lac to him, he sent him a legal notice and then the present Complainant was filed on 27.01.2009 with ulterior motives. Amresh Jha was also employed by the Complainant on a certain fixed salary but no deposit was made in his PF account. In July, 2008, payment of Amresh Jha was withheld by the Complainant at which he filed an application before the Labour Superintendent, Samastipur, who issued notice to the Complainant on 09.01.2009. After the Complainant received notice from the Labour Superintendent, he went to the house of Amresh Jha and threatened him at which he filed Sanha on 14.01.2009. It is under these circumstances that the Petitioner seeks quashing of the order impugned.

4. On the other hand counsel for the Opposite Party No.2-Complainant, submits that the accused persons had acted in a highhanded manner and hence, they should be prosecuted.

5. Having gone through the background facts of the case mentioned above, I would be inclined to hold that the present Complaint is malicious in nature and deserve to be set aside.

6. Hence, entire proceeding against all the accused

including the order of cognizance dated 24.02.2009 passed by the Judicial Magistrate, 1st class, Dalsingsarai, Samastipur, in T.R. No.845 of 2009 arising out of C.R. No.50 of 2009 is hereby set aside.

7. The application stands allowed.

(Anjana Prakash, J)

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