

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38102 of 2012

Arising Out of PS.Case No. -75 Year- 2010 Thana -null District- BHOJPUR

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1. Atal Bihari @ Atal Bihari Rai S/O Suresh Chandra Sharma Resident Of Village-
Dhanchhutran, Police Station- Chauri, District- Bhojpur At Arrah

.... Petitioner/s

Versus

1. The State Of Bihar
2. Nizamuddin Khan, The then A.S.I., Ajimabad Police Station, Azimabad

.... Opposite Party/s

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Appearance :

For the Petitioner : Mr. Kanhaiya Prasad Singh, Sr. Advocate
M/S. Alok Kumar & Birendra Kumar Singh
For the Opposite Party/s : Mr. B. N. Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 13-04-2015

1. Heard learned counsel for the petitioner and
learned counsel for the State.

2. This application under section 482 of the Code of
Criminal Procedure has been filed for quashing the order dated
15.01.2011 passed by the learned Chief Judicial Magistrate, Bhojpur
in Sahar P.S. Case No. 75 of 2010 whereby cognizance has been taken
against the petitioner under sections 341, 353, 504 and 506 of the
Indian Penal Code.

3. Opposite Party No. 2 lodged a written report
addressed to the Officer-in-charge of Sahar police station on
1.11.2010 alleging precisely therein, inter alia, that while he was on



duty during election rally of Shri Lalu Prasad, the petitioner was moving in the crowd with a bag. When he was asked to show his bag, he got angry and when the petitioner was stated to go out of the field, he misbehaved and used inappropriate words. Thus, it was alleged that the act of the petitioner caused disturbance in the public duty. On the basis of the aforesaid written report, an F.I.R. vide Sahar P.S. Case No. 75 of 2010 dated 1.11.2010 was registered against the petitioner under sections 341, 353, 504 and 506 of the Indian Penal Code and investigation was taken up.

4. On conclusion of investigation, the police submitted a report under section 173(2) of the Code of Criminal Procedure. On receipt of the police report, the learned Chief Judicial Magistrate took cognizance of the offence punishable under sections 341, 353, 504 and 506 of the Penal Code vide order dated 15.01.2011. The said order dated 15.01.2011 is under challenge in the present application.

5. It has been contended on behalf of the petitioner that from a bare perusal of the allegations made in the F.I.R. it would transpire that none of the ingredients of the offences punishable under sections 341, 353, 504 and 506 of the Indian Penal Code would be attracted against the petitioner. A general, vague and omnibus allegation has been made against the petitioner that he used



inappropriate words and refused to abide by the dictates of the informant. It has further been contended that there is no allegation in the F.I.R. that the petitioner was carrying anything incriminating in the bag and to carry a bag at a public place, by no stretch of imagination, can be said to attract the ingredients of any offence punishable under the Indian Penal Code. It has further been contended that, as a matter of fact, the petitioner is a practicing Advocate and on enquiry made by the informant, he disclosed his identity but the informant got annoyed without any rhyme or reason and implicated the petitioner in a false and frivolous case. Learned counsel for the petitioner has further contended that even in course of investigation, no material could be collected against the petitioner and the learned Judicial Magistrate, 1st Class, Arrah, before whom the police report was laid, has mechanically taken cognizance of the offence against the petitioner.

6. Learned counsel for the State has contested the matter. He has submitted that on the relevant date and time of the occurrence, the informant was discharging public duty. He noticed that the petitioner was moving in the crowd with a bag and when he was asked to show his bag, he got angry and misbehaved with the informant. Such an act on the part of the petitioner would certainly attract the ingredients of Sections 341, 353, 504 and 506 of the Indian

Penal Code and under such circumstance no fault can be found with the impugned order passed by the learned Magistrate.

7. I have heard learned counsel for the parties and perused the record. In order to examine the issue involved in the present case, I would like to consider the relevant provisions of law under which cognizance has been taken by the learned Magistrate.

8. Section 341 of the Penal Code prescribes punishment for 'wrongful restraint'. The word 'wrongful restraint' has been defined under section 339 of the Penal Code which reads thus :

“339. Wrongful restraint. ---
Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.”

9. From a bare reading of the definition of the word 'wrongful restraint' it would appear that it means keeping a man out of place where he wishes to be and has a right to be. The word 'wrongful restraint' implies abridgment of a person of a mob against his will. There is no allegation in the present case that the petitioner, in any way, created obstruction or prevented the informant from proceeding in a direction in which he had a right to proceed. In that view of the matter, the essential ingredients to constitute an offence punishable under section 341 of the Penal Code are completely

missing in the present case.

10. Section 353 of the Penal Code prescribes punishment for assault or criminal force to deter public servant from discharge of his duty. The essential ingredients of Section 353 of the Penal Code are as follows :-

(i) There must be assault or use of criminal force;
(ii) such assault or use of criminal force must have been made on a public servant; and (iii) It must have been on a public servant ____ (a) while he was acting in execution of a duty; or (b) with intent to prevent or deter that person from discharging his duty as public servant; or (c) in consequence of anything done or attempted to be done by him in the lawful discharge of his duty.

11. In the present case it would appear from the allegations made in the F.I.R. that there is nothing to show that the petitioner either assaulted or used any criminal force to deter the informant from discharge of his duty and, hence, the ingredients of Section 353 of the Penal Code would also not be attracted.

12. The next section under which cognizance has been taken is Section 504 of the Penal Code which prescribes punishment for intentional insult with intent to provoke breach of peace. The essential ingredients of Section 504 of the Indian Penal Code are (a) there must be intentional insult; (b) the insult must be

such as to give provocation to the person insulted; and (c) the intention that such provocation should cause, or the knowledge that such provocation was likely to cause, the person so insulted to break the public peace or to commit any other offence.

13. It would be apparent from the above discussion that a person would come within the ambit of Section 504 of the Penal Code if the provocation offered by him is of such a character as to cause the person provoked to break public peace or to commit any other offence. There is no such allegation in the present case. Moreover, the offence punishable under section 504 of the Penal Code is a non cognizable offence and for committing a non cognizable offence, an F.I.R. cannot be instituted without the permission of a Magistrate.

14. The only other section under which cognizance has been taken is Section 506 of the Penal Code which prescribes punishment for 'criminal intimidation'. The word 'criminal intimidation' has been defined under section 503 of the Penal Code which reads as under :

“503. Criminal intimidation.____
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.”

15. The Section is in two parts. The first part refers to the act of threatening 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, while the second part refers to the intent, with which threatening is done.

16. Regard being had to the facts and circumstances of the case I find that none of the ingredients of Section 503 of the Penal Code are attracted in the facts and circumstances of the present case and hence the petitioner could not have been booked for an offence under section 506 of the Penal Code.

17. In entirety of the facts, I find that there is no allegation that the petitioner was carrying anything incriminating in the bag which would have raised suspicion in the mind of the police officer on duty. In no way, can the action of the petitioner be described as one which could have created any obstruction in discharge of duty of a public post by the informant of the case. As noted above, the ingredients of the offences alleged against the petitioner are not attracted in the facts and circumstances of the case and, hence, the impugned order taking cognizance against the petitioner by the learned Chief Judicial Magistrate, Bhojpur cannot be upheld.

18. Accordingly, impugned order dated 15.01.2011 passed by the Chief Judicial Magistrate, Bhojpur at Arrah and the entire criminal proceeding launched against the petitioner in connection with Sahar P.S. Case No. 75 of 2010 are quashed. The application stands allowed.

(Ashwani Kumar Singh, J)

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