

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.45255 of 2012

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Kundan Kumar, Son of Late Ram Chandrika Sharma, Resident of Basant Vihar, P.S. Bettiah Mufassil, District Bettiah, at present posted as District Magistrate-cum-Collector, Samastipur.

.... Petitioner

Versus

1. The State of Bihar.
2. Manju Devi, Wife of Ram Pravesh Bhuiyan, Resident of Village New Area Sarawati, Mohalla Madanpur, P.O. & P.S. Madanpur, District Aurangabad (Bihar).

.... Opposite Parties

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Appearance :

For the Petitioner	:	Shri H.S. 'Himkar', Advocate
For O.P. No.2	:	Shri S.N.P. Sinha, Sr. Advocate
		Dr. Leelawati Kumari, Advocate
For the State	:	Shri Brajendra Nath Pandey, APP

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA
ORAL ORDER

3 07-05-2015 Heard Shri H.S. 'Himkar', the learned counsel appearing on behalf of the petitioner and Dr. Leelawati Kumari, the learned counsel appearing on behalf of the opposite party no. 2. Shri Suraj Narayan Prasad Sinha, the learned senior counsel also wanted to intervene and the Court has allowed him to assist it on behalf of opposite party no. 2.

2. The challenge in the present petition is to the order passed on 03.09.2011 by the learned Chief Judicial Magistrate, Aurangabad in Complaint Case No. 131 of 2010. The complaint petition was filed by the complainant alleging that to enquire about the fate of her application for being granted licence to run a pulse mill under 'प्रधानमंत्री रोजगार सृजन



कार्यक्रम' for which the complainant had been interviewed by the Deputy Development Commissioner, Aurangabad on 26.10.2009 and on 15.01.2010, she went to the Branch Manager of the State Bank of India, Madanpur Branch to enquire from the Branch Manager about the ultimate order which could have been passed on her application. Thereafter the complainant was accompanied by her husband through out and when she reached the District Magistrate-cum-Collector in his chambers, she was abused by uttering words 'Sali, Bhonsri, Harijan' and when the complainant requested him not to abuse her, he ordered his personal guard to throw away the complainant and her husband out of his chambers and accordingly, the two were pushed out the chambers. While slapping the above allegations upon the District Magistrate, Aurangabad, the complainant stated that her husband was the Deputy Chairman of the Zila Parishad and was a man of reputation and the manner in which she herself and her husband were abused, had eroded the reputation of the complainant and her husband. She further alleged that the District Magistrate, Aurangabad committed the above acts treating the complainant as a member of the scheduled castes.

3. As generally happens in such cases, on petition of complaint, the complainant was examined on S.A. and three

witnesses were also examined who also supported the allegations. The learned Chief Judicial Magistrate, perused the statement of the complainant on S.A., the statements of three witnesses and passed a detailed order holding that on facts, offence under Section 504 of the Indian Penal Code was duly made out and accordingly, directed the issuance of summons to Kundan Kumar for taking trial for committing such an offence.

4. The submission on behalf of the petitioner is that taking the allegations and the evidence of the three witnesses to be true on their face value, no offence under Section 504 of the Indian Penal Code was made out.

On the other hand Shri Suraj Narayan Prasad Sinah, the learned senior counsel who intervened to assist the Court on behalf of opposite party no. 2 submitted that the Court should direct the summoning of the petitioner also for committing offence under Section 3 of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act. Shri Sinha was emphasizing that merely noting that *prima facie* offence appears to be made out without indicating as to what offences were made out could be sufficient compliance of the provisions of Section 190 Cr.P.C. read with Section 204 Cr.P.C.

5. This Court refers to *Raghubans Dubey Vs. State*



of Bihar reported in *AIR 1967 SC 1167* in which Justice Sikri speaking in another context, i.e., the duty of a Magistrate to pass an order of summoning on perusing the police reports of facts constituting the offence, was pointing out that it was not only the duty of the Magistrate to find out as to what offences were made out, it was also his duty to find out as to who were the real offenders. In a complaint petition the facts may be lying within four corners of the complaint petition and there may not be a chance that additional facts are brought on record, but that could not be a proposition which could be universally applicable to all cases. Instances may be found in the courts of Magistrates who are to hold enquiry under Section 202 Cr.P.C. that witnesses do take benefits by naming other than those named in the complaint petition while deposing during enquiry under Section 202 Cr.P.C. It has been recently held in *Hardeep Singh Vs. State of Punjab & Ors.* reported in *(2014) 3 SCC 92* case which is in fact a decision of the Constitution Bench on the scope and ambit of Section 319 Cr.P.C., that even though an accused may not be named in a petition of complaint, if he has been named during an enquiry under Section 202 Cr.P.C. then such an accused could be summoned under Section 319 Cr.P.C. read with 204 Cr.P.C. Thus, what appears to me is that if the



Magistrate was passing a detailed order of summoning taking into account the various aspects of the case and then was coming to the conclusion as to what offence was really made out then he is supposed to have held that no offence other than that, which he has been mentioned by him in his summoning order appeared to be made out in his view. Going by this finding of mine, I have considered the submission of Shri Sinha that mere mention of the fact that some offence *prima facie* appeared made out could be sufficient compliance of the provisions of Section 204 Cr.P.C. may not be acceptable to me specially in context to the present order which runs into three long drafted pages and specifies the offences which appeared committed by the accused.

6. The other hurdle in the way of the opposite party no. 2 was that if she was at all aggrieved by the order of summoning and specially by the fact that some other offences ought to have been held to be made out on facts of the case, then she should have preferred a criminal revision petition under Section 397 read with Section 398 Cr.P.C. to get the order of summoning set aside and an order directing further enquiry issued to the concerned Magistrate for correcting the error. This Court cannot under Section 482 Cr.P.C., specially

under the facts narrated, could find it competent to issue such a direction. If there is a specific provision in the Cr.P.C. seeking a particular relief or by making a particular prayer, then the extraordinary powers of this Court under Section 482 Cr.P.C. cannot be resorted to.

7. Coming to the contention as to whether an offence under Section 504 of the Indian Penal Code was made out, it is pertinent to have a glance of Section 504 of the Indian Penal Code.

504. Intentional insult with intent to provoke breach of the peace.—Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

8. On a bare perusal of the provision what appears is that one must intentionally insult and thereby provoke the other person, intending or knowing that such provocation was likely to cause him to break the public peace or to commit any other offence. It was submitted that neither in the petition of complaint nor in the statement of witnesses any fact was stated that after having been insulted, the complainant was provoked so much so that he was bent upon breaking the peace or was about to commit an offence. If these important ingredients of

the offence were not constituted by the facts brought on record during the enquiry on the complaint petition, then in my considered view the learned Chief Judicial Magistrate definitely erred in law and facts both to hold that an offence under Section 504 of the Indian Penal Code was made out. The learned Chief Judicial Magistrate had indeed put down the ingredients of Section 504 of the Indian Penal Code but had faltered in noting that those ingredients of the offence, on the facts brought on record were established and appears the clearly falling in error which makes the summoning order passed by him not fit to be sustained.

9. In the result, the petition succeeds and is allowed. The summoning order passed by the learned Chief Judicial Magistrate, Aurangabad on 03.09.2011 in Complaint Case No. 131 of 2010 is hereby quashed.

(Dharnidhar Jha, J.)

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