

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.50258 of 2012

Kamal Ashraf

.... Petitioner/s

Versus

1. State of Bihar 2. Vipul Saran

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ramakant Sharma, Sr. Advocate
Mr. Rakesh Kumar Sharma, Advocate

For the State : A.P.P.

For the Opposite Party/s : None.

CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL ORDER

4 25-06-2015 Heard learned senior counsel for the petitioner and
learned A.P.P.

On the last date i.e. on 02.09.2013 the matter was
adjourned as inspite of repeated calls no one appeared on behalf of
opposite party No. 2 though the names of Mr. Subash Chandra Jha
and Mr. Sachindra Kumar Tiwary are appearing in the daily cause
list, but inspite of notices having been issued to them, they have
chosen not to appear even today.

Learned counsel for the petitioner submits that the order
dated 06.08.2012 passed in Complaint case No. 636 of 2012 by
Judicial Magistrate 1st class, Bhagalpur under sections 341, 323,
379/34 of the Indian Penal Code against the petitioner and other
accused persons, is bad in law.

The facts as made out by the complainant in the



complaint case filed before the Court below is that he was working as a deed writer at Bhagalpur Registry office and at present he is practicing Advocate and also preparing deeds. The complainant alleged that on 30.3.2012 one Smt. Nitu Devi had presented a deed for cancellation of Power of Attorney but the Registry Office did not pursue the said matter. When the complainant came to know about the fact, he with the son of Nitu Devi, Pankaj went to the office of Sub- Registry, Bhagalpur on 13.04.2012 and sought information from accused No. 2, who is a Clerk in the office of the Sub- Registrar, Bhagalpur.

He has further alleged that the accused NO. 2 took him to the office of the Sub Registrar and demanded illegal gratification and on some arguments the accused persons thrown him out of the office and other accused persons had also beaten him and Clerk, accused No. 2 snatched Rs. 5000/- from his pocket. He also submitted that these accused persons demanded illegal gratification before doing any work in registry office.

Having heard the parties and after going through the records, I find that there is a contradiction in the statement made by the complainant in complaint petition (Annexure-1) and has stated that the accused No. 2 snatched Rs. 5000/- from his pocket where as in the deposition of Pankaj, Son of Nitu devi (Annexure-

5) has stated that accused no.2 had snatched Rs. 5000/- from his pocket. The petitioner has also filed a supplementary affidavit by which he has brought to the notice of the Court (Annexure-7) which is a complaint made by Nitu Devi before the District Magistrate-cum- District Registrar, Bhagalpur making some allegations against all the accused persons .

The matter was sent for enquiry by the District Magistrate cum- Registration Officer, Bhagalpur vide letter No. 1239 C dated 05.5.2012 to the Additional Collector, Bhagalpur , who has submitted his report, as contained in Annexure-8, vide letter No. 1250/C dated 09.4.2013 in which he has specifically mentioned that on 29.03.2012 that i.e., the alleged date of occurrence the said papers were not produced before the Registry office, Bhagalpur. He has further stated that the Registration of documents is fully computerized and from the records, it appears that the documents, which were to be registered by Nitu Devi, were subsequently registered on 14.06.2012 by deed no. 645. He has further stated that the date mentioned by Nitu Devi to be 29.03.2012 (as stated by her in Annexure-7) is not correct.

Learned counsel for the petitioner has further submitted that the accused persons are government servants and before taking cognizance, prior sanction of the government was

required to proceed further in enquiry or trial.

Having heard the submissions of the parties, I am of the view that contradiction in the statement of the complainant and Pankaj is apparent from the face of the record. Further, departmentally also when the matter was enquired, it was found that document having not been registered on the alleged date has been subsequently registered on 14.06.2012.

Learned Magistrate has also not applied his judicial mind before taking cognizance against public servant.

Be that as it may, the document has already been registered on 14.06.2012 and learned counsel appearing on behalf of the opposite party, having filed power on his behalf, has chosen not to appear. Under the circumstances the cognizance order dated 06.08.2012 is hereby quashed.

The application is, accordingly allowed.

(Nilu Agrawal, J)

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