

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19905 of 2011

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1. Shambhu Prasad @ Shambhu Lal son of Shri Gaya Lal, Gram - Laund, Thana -
Sirdala , Zila - Nawada

.... Petitioners

Versus

1. Bihar Rajya
2. Arakshi Mahanideshak , Bihar, Patna
3. Arakshi Mahanirikshak (Police Mukhyalaya), Bihar, Patna
4. Arakshi Up-Mahanirikshak, Magadh Chetra, Gaya
5. Arakshi Adhishak Nawada Shri Vinod Kumar
6. Arakshi Upadhishak Rajouli, Shri Ajay Kumar
7. Thana Prabhari Sirdala, S.K. Manjhi
8. Sahayak Avar Nirikshak, Rajouli Sumeshwar Lakda
9. Police Nirikshak Rajouli, Sachidanand Pandey
10. Police Abar Nirikshak, Rajouli Gajadhar Yadav

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Indradeo Prasad, Advocate

For the Respondent/s : Mr. Mritunjay Kumar A.C. to AAG-10

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 26-11-2015

Heard the counsel for the petitioner and AC to AAG-10

for the State.

The writ application seeks a direction upon the respondents to pay adequate compensation for having subjected him to malicious prosecution in which he was exonerated by the trial Court vide judgment of acquittal dated 21st of April, 2011. The petitioner was made accused on the basis of complaint which was registered as Rajouli P.S. case no. 86 of 2008 under Sections 376 of the IPC and Section 3(i)(x) of the Scheduled Castes and Scheduled



Tribes (Prevention of Atrocities) Act, 1989. The complainant/informant alleged that on the date of occurrence while she was coming from Rajouli, Nawada, the petitioner on some specious plea gave her a lift to the destination and took her to a lonely place and committed rape on her. The charge sheet was submitted which led to Sessions Trial no. Spl (H) case no. 1 of 2009. The defence of the petitioner was that he has been framed falsely by a fake lady called Mamta Devi. Considering the evidence adduced by the prosecution the trial Court found that there was lack of cogent evidence against the petitioner and accordingly he was acquitted of the charge. The Court while acquitting negated the case of the petitioner that Mamta Devi was a fake lady. Paragraph no.14 of the judgment shall have relevance and is extracted hereinbelow:-

“14.In this case accused Shambhu Prasad had filed a petition U/s 340 Cr.P.C. for lodging a case against the complainant and responsible police officer. In this respect I have to say that as I have hold above that Mamta Devi @ Meena Devi is not a fake lady and if any police officer made defective or collusive investigation against the accused then he may file a petition before a higher police authority. The petitioner Shambhu Prasad has also option that he may file a case of malice prosecution against the responsible persons. I do not think to initiate the proceeding U/S 340 Cr P.C. against the complainant and others”.

Against the observation of the trial Court made in para

14 of the judgment , the petitioner filed an appeal before this Court being Cr. Appeal (SJ) no. 675 of 2011. The said appeal was disposed of observing as under in para -8:-

"8 .It is, as such, hereby, directed that learned trial Judge shall issue a notice to P.W.2 Meena Devi alias Mamta Devi and all concerned , to appear before him and to show cause on holding an enquiry and filing of a complaint, in the light of the evidence available on record. After considering the show cause, if it is convinced that any offence appeared committed in or in relation to the evidence adduced in that proceedings which required the filing of a complaint as envisaged by Section 195(i) Cr.P.C. for eradicating the commission of such offence or offences in future, it shall file the complaint."

In the light of the said order the matter is pending enquiry before the trial Court. In the meanwhile, the petitioner has filed the present application for payment of the compensation as he was made to suffer jail imprisonment for a long period of time and the trial ended in acquittal. It is the contention of the petitioner that such prosecution was wholly malicious which resulted in acquittal. The petitioner is, therefore, entitled to compensation as his right guaranteed under the constitution of the India was curtailed for a fair period of time without there being any valid/justifying reasons. He has relied in this regard on a judgment of the Hon'ble Apex Court in the case of **Dr. Ram Lakhan Singh vs. State Government of Uttar Pradesh through Chief Secretary in Writ Petition (Civil) No. 933**

of 2014.

Learned counsel for the State, on the other hand, has opposed the prayer. It is submitted that a lady had filed a criminal complaint against the petitioner which was investigated and he was put on trial and for want of adequate evidence he was acquitted by the trial Court. The claim of the petitioner that the lady who lodged the case of having subjected her to rape is a fake lady is not an admitted position since an enquiry relating thereto is going on in the Court at the instance of the petitioner. The Court, having appreciated the facts of the case, could have directed for payment of the compensation but considering the factual background of the case, the trial Court did not pass such order. It is not a case where the fundamental right of the petitioner was curtailed in a blatant illegal manner without sanction of law or the authority. Indisputably, the criminal complaint was lodged against the petitioner about having committed sexual assault on the complainant/informant. Since there was some evidence to support the allegation, he was put to trial. The prosecution in course of trial did not produce convincing evidence which resulted in acquittal of the petitioner. The case of the petitioner that the prosecution was out and out malicious is yet to be considered in the pending enquiry.

On going through the materials on record it does not



appear to this Court the liberty of the petitioner by subjecting him to imprisonment on the strength of a criminal charge of having committed rape on the lady is without any authority of law or sanction of law. The trial Court in seisin of the matter appreciated the rival evidence and concluded that the petitioner was entitled to acquittal. However, the Court was not convinced about through malicious prosecution and as such no compensation was awarded in favour of the petitioner. Code of Criminal Procedure provides for arrest and lodging of a person against whom a criminal charge is levelled and is pending enquiry/investigation. Even on the basis of strong suspicion the accused can be put on trial.

Reliance placed on the case of **Dr. Ram Lakhn Singh(supra)** appears not relevant in the case as the Apex Court in the said case found glaring facts available on record to suggest that an officer was made to suffer on account of incurring the wrath of the political leaders in power. Not only the order of the High Court was defied in doing so but the pensionary benefits and another benefits of the petitioner was withheld for several years. The Apex Court in the peculiar facts of the case, directed for payment of compensation as would appear from para 14 of the said judgment which is extracted hereinbelow:-

“14. It appears that after his discharge from the Court proceedings, the petitioner had written a

letter to the Chief Minister on 12th May, 2011 seeking an amount of Rs. 4 ½ crores towards compensation and damages. Normally, this Court is reluctant in determining or granting any compensation while exercising its jurisdiction under article 32 of the Constitution, but advises the parties to approach the competent Courts for adjudicating those issues. However, keeping in view the peculiar facts and circumstances of this case and taking into consideration the age and trauma suffered by the petitioner who spent about 11 days in jail and fought the legal battle for about a period of 10 years before various forums and more particularly in the absence of any proved charges of corruption against the petitioner, we deem it fit that a lump sum amount of Rs. 10 lakhs be awarded as compensation to the petitioner on all forms.”

The case, at hand, is entirely different. The petitioner, if defamed, can always seek remedy in law before the Court. The materials on record do not persuade this Court to invoke the extraordinary and discretionary writ jurisdiction to grant the relief prayed for in this writ application.

It is, accordingly, dismissed.

(Kishore Kumar Mandal, J)

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