

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.4866 of 2013

Arising Out of PS.Case No. -1034 Year- 2010 Thana -PATNA COMPLAINT CASE District-
PATNA

=====

1. Vijay Kumar @ Vijay Krishna Son Of Ram Nath Mahto Resident Of
Village- Bochachak Virindavan Road No. 1, Ram Nagar, In Front Of Devi
Sthan'S Gate, P.S.- Phulwarisharif, District- Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. Ram Janam Mahto Son Of Mahadeo Singh Resident Of Village-
Bochachak, Wrindavan Road No.1, Ram Nagar, In Front Of Devi Sthan'S
Gate, P.S.- Phulwari Sharif, District- Patna

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Smt. Putul Sinha
For the Opposite Party/s : Mr. Harendra Prasad (App)

=====

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA
ORAL ORDER

7 04-05-2015 Heard Sri Kamlendra Prasad Singh, learned counsel for

the petitioner and Sri Harendra Prasad the learned counsel on

behalf of the State.

The petition seeks quashing of the proceedings initiated
by order passed on 17.07.2010 in Complaint Case No.1034 (C) of
2010 by Judicial Magistrate, Ist Class, Patna by which the
petitioner and others were summoned to stand their trial.

The ground upon which the petition has been filed is that
on the date of occurrence, i.e., on 18.04.2010 the petitioner was
discharging his official duties in the Indian Army where he was
posted as Nayak and his implication is false. In support of the



contention, letters issued from the Commanding Officers under whom the petitioner was working on the relevant date, have been annexed. In addition to that, it has been contended that the very complaint petition indicates that the facts were framed so as to implicating the petitioner and others in a false case and no supporting material was placed on record as regards the claim of the complainant that he was badly beaten up as a result of which he had received bleeding injuries on his person.

Trial by a Judicial Magistrate appears not permissible in the light of Section 475 Cr.P.C. of a person who is serving the Indian Army or who could be covered by that Section if the offence had really been committed by an accused who could be serving the Military, Navy or Air Force of the Union of India. The arrest and custody of such an accused is also barred as appears from Section 45 Cr.P.C. The Bihar Police Manual also contains the elaborate provision not to arrest a person who is serving the Indian Armed Forces or the Navy or the Indian Air Force. These are some of the provisions which could be noticed by the Court so as to consider whether the prosecution of the petitioner by an ordinary Civil Code could be permissible as Section 475 Cr.P.C. itself bars the trial of such persons and requires the Magistrate to make the statements of facts in respect of such an accused and

refer the matter to the Commanding Officer who could have the jurisdiction over the serviceman for proceeding against him under Court of Marshal Law.

The above aspects apart, while perusing the complainant petition, I found it very difficult to brush aside the arguments of the learned counsel appearing on behalf of the petitioner that the complaint petition had been fabricated quite ahead of filing the same and probably the complainant was withholding the filing of the same before the appropriate Court for any particular reason and could file it only on 20th of April, 2010. The issue of fabrication of the facts was highlighted by the learned counsel appearing on behalf of the petitioner by pointing out to this Court that general allegations of being assaulted brutally by the accused persons so as to be inflicted with bleeding injuries having not been shown to the Court by production of a medical certificate, the statement in paragraph-5 of the complaint petition makes it highly probable that the facts contained in complaint petition were fabricated. The complainant had noted that after he was turned down the request by the Officer-in-Charge of Phulwarisharif police station to register a case, he filed the complaint petition on 30th of April, 2010. This statement regarding the date of filing of the complaint petition itself is falsified the complaint petition was



signed by the complainant Ramjanam Mahto on 19.04.2010 and which was again signed by his Advocate on 20th of April, 2010 and the same was presented before the Chief Judicial Magistrate on 20.04.2010 as appears from the date which was put under the signature of the Chief Judicial Magistrate, Patna. The complainant in spite of having filed the complaint petition on 20th of April, 2010, did not choose to appear before the Chief Judicial Magistrate, Patna, for giving his statement on solemn affirmation and it was only on 22nd of April, 2010 that his statement under Section 200 Cr.P.C. was recorded. While making his statement on solemn affirmation, the complainant appears stating facts which were again contrary to the basic facts alleged in the complaint petition.

Courts are barred from weighing contradictions in the evidence of witnesses, but if the very complaint petition and the record of the case indicates that the case could have been fabricated and could have resulted out of some malice or ill-will towards the accused persons as appears in the case in hand, then in my view, it may not be precluded from considering those aspects of the case so as to terminating the prosecution.

Regard being had to the above circumstances which was noticed by me, I am of the view that the complaint petition appears

stemming from a sense of vengeance or malice or from any unjust reason, than seeking justice and in that view it is not legitimate to allow the prosecution to continue.

In the result, the petition succeeds. The order of cognizance dated 17.07.2010 is quashed.

(Dharnidhar Jha, J)

B.Kr./-U.K.

U		T	
---	--	---	--