

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.16335 of 2013

Arising Out of PS.Case No. -1059 Year- 2010 Thana -NAWADAH COMPLAINT CASE District-
NAWADA

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Birendra Kumar Singh, son of Baleshwar Singh, resident of Village-
Sindhaura, Police Station, Wazirganj, District-Gaya.

.... Petitioner/s

Versus

1. State of Bihar
2. Hari Mistri, son of Late Karu Mistri

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Lokesh Kumar Singh--Advocate

For the Opposite Party/s : Mr. Amrendra Prasad(A.P.P.)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

04 14-07-2015

Heard learned counsel for the petitioner, learned

Additional Public Prosecutor as well as learned counsel for the
opposite party no.2.

2. Petitioner, who happens to be Block Education
Officer, Warsaliganj has challenged the order dated 02.02.2013
whereby and whereunder he has been summoned to face trial for
an offence punishable under Section 323, 385, 379/34 of the I.P.C.
by Sri Girish Mishra, Judicial Magistrate, 1st Class, Nawada in
Complaint Case nos.1059/2010/Trial No.1921/2013.

3. Opposite Party no.2, Hari Mistri had filed
complaint petition (Annexure-1) showing date of occurrence as
21.08.2010 in between 3.00 to 3.30 p.m. disclosing the fact that
Gandhi Bal Vikas Madhya Vidhyalaya, Warsaliganj belonging to



the opposite party no.2 is running since 1968 and all the documents relating to the same is under possession of the complainant. It has also been disclosed that being a Saturday, the school was closed at 10.30 a.m. and on account thereof, while the complainant was recessing at his residence, all the five accused, (two named and three unknown) arrived and further, instructed him to part with money as he was earning a lot from his school. They asked Rs.10,000/-, which was declined by him, over which petitioner had scolded and further, directed to face dire consequence. Accused no.2 instigated the petitioner to seize all the relevant documents over which, petitioner had directed the complainant to open the office. As complainant disclosed that the time was over, therefore, come on Monday to inspect the office, irked them and on account thereof, they all dragged him, assaulted him with fists and slaps, broken the lock, entered inside the office, lifted so many documents, torn documents, also took signature over blank papers and during course thereof, Shiv Kumar Malakar had snatched away a chain. Then thereafter, they dragged him to police station, got him locked up and then, implicated him in a false case.

4. On the basis of the aforesaid complaint petition, an enquiry in terms of Section 202 Cr.P.C. commenced during course

of which, witnesses were examined and by the order impugned, cognizance has been taken followed with summoning of petitioner including others on account thereof, instant petition has been filed.

5. It has been submitted on behalf of petitioner that under a P.I.L. bearing C.W.J.C. No.11774 of 2004, an order was passed by this Court to the effect that private school should not be allowed to take undue advantage by posing themselves a Government School as well as should not be allowed to issue any kind of certificate etc. and further to take suitable action against erring school administration. Whereupon the District Magistrate, Nawada had identified different school indulged in such kind of illegal activities and the school of opposite party no.2 lies at serial no.6. Accordingly, the District Magistrate, Nawada had directed to inspect and take suitable legal action to the extent of filing of first information report and in pursuance thereof, petitioner had visited the place inspected the school, found irregularities and on account thereof, on his written report, Warsaliganj P. S. Case no.143 of 2010 was registered. Then thereafter, only to make out a defence case, instant case has been filed.

6. It has also been submitted that apart from this, petitioner had acted under discharge of his official duty being a public officer and on account thereof, sanction was sine qua non

for the prosecution in accordance with Section 197 of the Cr.P.C. Furthermore, it has also been submitted that from perusal of the narration of the complaint petition itself, it is apparent that it happens to be a vexatious proceeding purposely launched to make out a defence case counter to Warsaliganj P. S. Case no.143 of 2010. As such, the order of cognizance is fit to be quashed.

7. On the other hand, learned counsel representing the opposite party no.2 has specifically put stress over the averments/ allegations made in the complaint petition and submitted that dragging of opposite party no.2, assaulting opposite party no.2 as well as snatching of chain does not come within the purview of due discharge of official duty and on account thereof, Section 197 Cr.P.C. was not at all enforceable. Furthermore, witnesses had supported the case. It has also been submitted that at the stage of an enquiry under Section 202 Cr.P.C. only a prima facie material has to be seen which, the Court below had found and so, the order impugned happens to be in accordance with law.

8. ***AIR 1992 SC 604 State of Hariyana & Ors. Versus Bhajan Lal & Ors.*** the Hon'ble Apex Court has identified following categories including others wherein prosecution can be quashed and those are :-

“(1) Where the allegations made in the first information report or the complaint, even if they

are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, on investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient grounds for proceedings against the

accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceedings is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

9. It is apparent from the complaint petition itself that on 21.08.2010, petitioner was booked and from Annexure-2, it happens to be in connection with Warsaliganj P. S. Case no.143 of 2010 launched at the behest of petitioner, Birendra Kumar Singh, Block Education Officer. It is also evident from Annexure-8 that District Magistrate had identified the school of the opposite party no.2, which was engaged in illegal activities and further, in pursuance of order dated 17.04.2008 passed in C.W.J.C. No.11774 of 2004, petitioner was directed to inspect as well as to launch a criminal case in case, so needed. Therefore, presence of petitioner

at the place of opposite party no.2 happens to be in due discharge of official duty and on account thereof, whatever been alleged, appears to be a vexatious proceeding as well as the allegation is found so absurd and inherently improbable that it looks difficult to accept the same and consequent thereupon, the order impugned dated 02.02.2013 is quashed to the extent of petition only.

10. Accordingly, instant petition is allowed.

(Aditya Kumar Trivedi, J)

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