

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.17650 of 2015

Arising Out of PS.Case No. -785 Year- 2014 Thana -JEHANABAD COMPLAINT CASE District-
JEHANABAD

1. Manoj Kumar Son of Yugal Prasad @ Yugal Prasad Sharma Resident of village -
Kendua, P.S. Parasbigha, District - Jehanabad

.... Petitioner/s

Versus

1. The State of Bihar
2. Sita Ram Sharma Son of Late Ramlal Singh, Resident of village - Kendua, P.S.
Parasbigha, District - Jehanabad

.... Opposite Party/s

with

Criminal Miscellaneous No. 13574 of 2015

Arising Out of PS.Case No. -785 Year- 2014 Thana -JEHANABAD COMPLAINT CASE District-
JEHANABAD

1. Yugal Prasad @ Yugal Prasad Sharma Son of Late Ram Lal Singh Resident of
village - Kendua, P.S. Parasbigha, District - Jehanabad

.... Petitioner/s

Versus

1. The State of Bihar
2. Sita Ram Sharma Son of Late Ramlal Singh Resident of village - Kendua, P.S.
Parasbigha, District - Jehanabad

.... Opposite Party/s

Appearance :

(In Cr.Misc. No. 17650 of 2015)

For the Petitioner/s : Mr. Vishal Saurabh, Adv.
Mr. R.K. Sharma, Adv.
For the State : Mr. Abhay Kumar Roy, APP
For Opposite Party No.2 : Mr. Sunil Kumar, Adv.

(In Cr.Misc. No. 13574 of 2015)

For the Petitioner/s : Mr. Mr. Vishal Saurabh, Adv.
Mr. R.K. Sharma, Adv.
For the State : Mr. Murlidhar, APP
For Opposite Party No.2 : Mr. Sunil Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 23-06-2015

Since these two applications filed under section 482 of
the Code of Criminal Procedure (for short ‘the Code’) arise out of a

common complaint seeking identical relief, they have been heard together and are being disposed of by a common order.

2. In these applications, the challenge is to the order dated 22.11.2014 passed by the learned Sub Divisional Judicial Magistrate, Jehanabad in Complaint Case No. 785 of 2014 corresponding to Tr. No. 68/14/ Tr. No. 3836/14, summoning the petitioners as accused to face trial under sections 323, 420 and 120-B of the Indian Penal Code.

3. Petitioner Manoj Kumar of Cr.Misc. No. 17650 of 2015 is nephew of the complainant whereas petitioner Yugal Prasad @ Yugal Prasad Sharma of Cr.Misc. No. 13574 of 2015 is the brother of the complainant.

4. The complaint in question was filed on 29.08.2014 before the learned Chief Judicial Magistrate, Jehanabad. The date of occurrence as mentioned in the format of complaint is the period intervening between 26.07.2014 to 23.08.2014. According to the complainant, his brother Yugal Prasad Sharma had been appointed as a School Teacher in the year 1983 on the basis of forged and fabricated certificate. He retired on attaining the age of superannuation in 2012. It has been alleged that the complainant sought for an information under the Right to Information Act regarding the original date of birth of Yugal Prasad Sharma from the



Headmaster of Government High School, Sarta, Jehanabad but the Headmaster of the High School with oblique motive and malafide intention sent the aforesaid information through registered post. Thereafter, the Postmaster of Pinjaur Post Office and the Postman Abhishek Kumar in conspiracy with the petitioners of these applications delivered the envelope containing desired information sought for by the complainant to the petitioner Manoj Kumar, who is son of petitioner Yugal Prasad. It has also been alleged that the accused persons had abused and assaulted the complainant in presence of witnesses.

5. I have heard Mr. Vishal Saurabh, learned counsel for the respective petitioners of these two cases, Mr. Sunil Kumar, learned counsel for the complainant and Mr. Abhay Kumar Roy and Mr. Murlidhar, learned Additional Public Prosecutors for the State.

6. Learned counsel for the petitioners has submitted that the instant complaint case has been instituted with ulterior motive due to land dispute between the parties. He has contended that petitioner Yugal Prasad Sharma had entered into service in the year 1983 on the basis of a bonafide certificate. His date of birth has been recorded in his Matriculation Certificate as 02.01.1952 and hence on attaining the age of superannuation he retired from service on 31.01.2012. The allegations made by the complainant are imaginary in nature. Entire



service career of the petitioner Yugal Prasad Sharma was unblemished and spotless. He has further submitted that out of animosity between the parties due to partition of land, the complainant had made several complaints to the authorities of the Education Department highlighting allegation of manipulation of entries in respect of date of birth in relevant certificates while the petitioner was in service but as there was no substance in the allegation made by the complainant the Department did not take any action against the petitioner. He has further contended that the falsity of the case would appear from the fact that though in the complaint petition the date of occurrence has been mentioned as 23.08.2014, but when the complainant was examined on oath under section 200 of the Code, he has stated that he was assaulted and abused by the accused Manoj Kumar on 25.08.2014. In his statement on oath he has not stated that the accused Yugal Prasad Sharma either abused or assaulted him. He has further contended that if the alleged incident of occurrence had taken place on 23rd August, 2014, there is no explanation as to why the complaint was instituted after six days on 29th August, 2014. He has contended that save and except oral allegation made by the complainant, there is no other material to substantiate the complainant's version.

7. Per contra, learned counsel for the opposite party no.2 has



submitted that though there is minor discrepancy in the statement made on oath in respect of the date of incident but the said fact alone would not falsify the allegations made in the complaint. He has further contended that the postman, who has also been made accused in the present case, in conspiracy with other accused persons, deliberately delivered the envelope containing the information supplied and sent through registered post on a wrong address. He has submitted that the petitioner Yugal Prasad Sharma continued in service upto 2012 on the basis of a manipulated entry of date of birth in the original certificate issued by the Bihar School Examination Board.

8. Learned Additional Public Prosecutors appearing on behalf of the State have adopted the submissions made by the learned counsel for the opposite party no.2.

9. I have heard the respective counsel for the parties and with their assistance perused the record. Apparently, the allegations made by the complainant seem to be attended with malafide. There is no dispute to the fact that the complainant is the brother of the petitioner Yugal Prasad Sharma and uncle of the petitioner Manoj Kumar. There is also no dispute to the fact that the petitioner Yugal Prasad Sharma had entered into service in the year 1983 and retired from service in 2012. Admitted case of the complainant is that he had



raised dispute regarding wrong entry of date of birth on earlier occasions while the petitioner Yugal Prasad Sharma was in service but no action was taken by the authorities in this regard. The facts narrated and explained above would demonstrate that the criminal prosecution is being used as instrument of harassment or for seeking private vendetta or with an ulterior motive. Moreover, the allegations made in the present case are not in respect of manipulation or forgery in any certificate but the same is in respect of delivery of an information sent through registered post on a wrong address by the postman who has also been made accused.

10. In my view, such an allegation would not constitute an offence punishable under section 420 of the Indian Penal Code. Further, there is no corroborative documentary evidence in respect of the fact that the alleged information sent through registered post was ever delivered on a wrong address. Apart from ocular testimony of the complainant, there is nothing on record to show that the postman had delivered any registered letter to either of the petitioners of the present case. Learned counsel for the petitioners has rightly pointed out that though the occurrence alleged is said to have taken place between 26.07.2014 to 23.08.2014 but while being examined on oath the complainant has stated that he was abused and assaulted by the petitioner Manoj Kumar on 25.08.2014. This fact clearly goes to

show that an imaginary story has been narrated in the complaint petition.

11. Regard being had to the facts and circumstances of the case, I am of the view that the complainant has launched a vexatious proceeding against the petitioners and the court below erred in summoning the petitioners to face trial.

12. Once I have come to the conclusion that the proceeding of the court has been launched with ulterior motive, it is the bounden duty of this Court to ensure that the criminal prosecution is not used as instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurize the accused.

13. In *State of Haryana Vs. Bhajan Lal [1992 Supp (1) SCC 335]*, the Supreme Court has laid down principles on which Court can quash criminal proceedings under section 482 of the Code. These are as follows :-

“102.

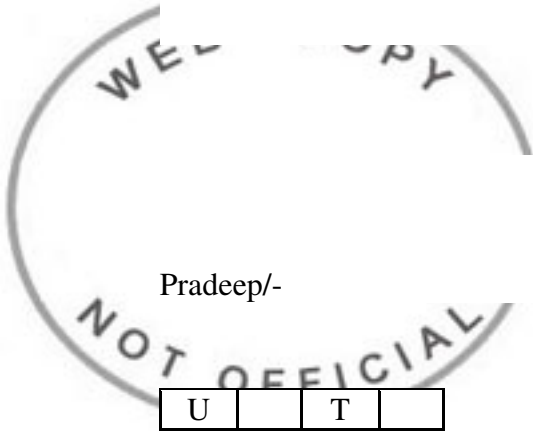
- (1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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.

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- (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 F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no 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 ground for proceeding 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 proceeding 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.”

14. Principle Nos. 5 and 7 are clearly applicable in the present case.

15. In the result, these applications are allowed. The impugned order dated 22.11.2014 passed by the learned Sub Divisional Judicial Magistrate, Jehanabad in Complaint Case No. 785 of 2014 corresponding to Tr. No. 68/14/ Tr. No. 3836/14 summoning

the petitioners as accused is hereby set aside resulting into dismissal
of the said complaint.



(Ashwani Kumar Singh, J)

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