

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.46203 of 2012

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Ram Nath Thakur

.... Petitioner/s

Versus

State of Bihar & Anr

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Anil Kumar Roy

For the Opposite Party/s : Mr. Md. Aslam Ansari(App)

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL ORDER

3 01-05-2015

Heard learned counsel for the petitioner and

learned counsel for the State.

2. This application under section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 25.09.2012 passed by the learned Judicial Magistrate Ist Class, Buxar passed in Buxar Town P.S. Case No. 96 of 2012 whereby the learned Magistrate has discharged opposite party for being prosecuted under section 385 and 387 of the Indian Penal Code.

3. According to the allegations made in the first information report the case of the informant is that at about 12.05 hour a call was made on his mobile No. 9430219697 from Mobile No. 9576060245 The phone caller disclosed his identity as Sonu Rai .He abused the informant and told that Rs. 500000/- has been paid to him to kill the informant. On enquiry, the caller

told that “your father is speaking”. He further told that you being a Government counsel are asking about my introduction? I will kill you within twenty days.

4. The first information report was registered for the offences punishable under sections 385 and 387 of the Indian Penal Code. The police investigated the case and found the allegation to be true against the opposite party no.2 Bhola Thakur and, accordingly, he was sent up for trial. The learned Magistrate took cognizance of the offence and summoned O.P. no.2 to face the trial.

5. At the stage of framing of charge an application under section 239 of the Code of Criminal Procedure was filed by the opposite party no.2 for seeking discharge from the case. After hearing the parties and perusing the record, by a reasoned order dated 25th September, 2012, the learned Magistrate Ist Class, Buxar discharged O.P. no.2 from the proceeding pertaining to the offences punishable under sections 385 and 387 of the Indian Penal Code and found that for the allegation of giving threat and using abusive language, an offence under section 506 is made out.

6. Accordingly, the accusation of offence punishable under section 506 of the I.P.C. was explained to the

O.P. no.2 to which he pleaded not guilty and claimed to be tried.

7. Learned counsel for the petitioner submits that the impugned order dated 25.09.2012 is bad in law,. as there is specific allegation that the O.P. no.2 had threatened the informant of the case to kill him within 20 days for the act of doing pairvi in a criminal case against him and hence the ingredients of the offences punishable under sections 385 and 387 were attracted in the present case.

8. Learned counsel for the State has also supported the contention of the learned counsel for the petitioner.

9. I find that in order to attract the offence punishable under sections 385 and 387 of the Indian Penal Code extortion is a necessary ingredient. The word 'extortion' has been defined under section 383 of the Indian Penal Code which reads as under:

“383 Extortion- Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or any thing signed or sealed which may be converted into a valuable security, commits extortion.”

10. In the present case there is no allegation

that O.P. no.2 put the informant in fear of any injury and thereby dishonestly induced him to deliver any property or valuable security or anything signed or sealed which would be converted into a valuable security. In absence of these allegation the offence of extortion punishable under section 385 of the Indian Penal Code is not attracted.

11. In that view of the matter, the learned Magistrate has rightly discharged the O.P. no.2 from being tried for the offences punishable under sections 385 and 387 of the Indian Penal Code. Accordingly, the application being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

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