

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.11481 of 2013

Arising Out of PS.Case No. -2675 Year- 2012 Thana -PATNA COMPLAINT CASE District- -

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1. Suman Kumar Mishra, S/O Late Sitaram Mishra, Resident Of Mohalla New Millat Colony, Sector-1, Fulwari Sharif, P.S. Fulwari Sharif, District Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Ram Binod Jha, S/O Sri Ram Chandra Jha, Resident Of Mohalla New Millat Colony, Sector-1, Fulwari Sharif, P.S. Fulwari Sharif, District Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr. Mayanand Jha(App)

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

2 07-05-2015 Heard learned counsel for the petitioner and learned A.P.P. for the opposite parties.

This criminal miscellaneous application has been filed under Section 482 Cr.P.C. for quashing the order dated 18.12.2012 whereby the court below took cognizance under Sections 323, 341, 447/34 I.P.C. in Complaint Case No.2675/C of 2012 pending in the Court of Judicial Magistrate, 1st Class, Patna.

The learned counsel for the petitioner submitted that by the same occurrence the petitioner has also filed a complaint case wherein although the police filed final form on the basis of the protest petition, which was treated as complaint application notices have been issued to the opposite party no.2. The



occurrence took place on 07.04.2012 whereas the present complaint case has been filed on 19.09.2012. The learned counsel further submitted that both the parties i.e. the petitioner and opposite party no.2 are the neighbours and the allegation is that the petitioner is demanding Rs.1 lac from the opposite party no.2 and, therefore, there is enmity between the parties. On these grounds the learned counsel submitted that the impugned order taking cognizance is liable to be quashed because the proceeding itself is malafide.

The learned A.P.P. objected the prayer and submitted that from perusal of the complaint case it appears that the allegation made therein fully disclosed to have committed the offence under which the cognizance has been taken.

Perused the complaint application, which is Annexure-1 to this application. From perusal of the same, it appears that there is allegation of assault against the petitioner. Now, therefore, it cannot be said that no offence is disclosed in the complaint application. So far the submission of the learned counsel that the proceeding itself is malafide or that there is delay in filing the complaint application or that there is counter case also is concerned, it can be said that those matters are to be considered at the time of trial only. At this stage, meticulous examination of

the materials is not called for. It is settled principle of law that even on strong suspicion cognizance can be taken. Further it is evident that the petitioner has also filed counter case for the same occurrence, therefore, the occurrence is admitted. Further in the complaint case filed by the petitioner, the police after investigation filed final form and in that case notices have been issued to the opposite party no.2. There is nothing on record to show that the proceeding is vexatious or malafide.

As stated above from perusal of the complaint application, it appears that there is disclosure of commission of offence under I.P.C. From perusal of the impugned order I find that the court below after applying judicial mind has taken cognizance. Therefore, in exercise of inherent discretionary jurisdiction under Section 482 Cr.P.C. the impugned order cannot be quashed.

Accordingly, this criminal miscellaneous application is dismissed.

(Mungeshwar Sahoo, J)

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