

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.45078 of 2012

=====

Madhukar Prasad Yadav

.... Petitioner/s

Versus

State of Bihar & Anr

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Sharda Nand Mishra

For the Opposite Party/s : Mr. Parmanand Prasad (App)

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 23-04-2015

Heard the learned counsel for the petitioner and the learned A.P.P. on behalf of the State of Bihar.

The petitioner has filed this Cr. Misc. application under Section 482 of the Code of Criminal Procedure for quashing of the order dated 26.04.2012 passed by learned Judicial Magistrate, Sikrahna at Motihari in Complaint Case No.727 of 2011.

It appears that a complaint was filed by the opposite party No.2 against the petitioner alleging that the petitioner is PDS dealer. The complainant was taking foodgrains but since March, 2010, the petitioner has not distributed the foodgrains and kerosene oil to any of the public. The petitioner used to do black marketing by selling the Government scheme foodgrains in market. When the complainant objection, the petitioner assaulted, abusing the complainant in the name of his caste. After recording

evidences under Section 282 Cr.P.C. by the impugned order, the Court below has taken the cognizance under section 409, 504 IPC and 3(i) (x) of SC & ST Act.

The learned counsel for the petitioner submitted that the petitioner is not a Government servant and, therefore, Section 409 is not applicable. The learned counsel further submitted that the offence under Section SC & ST Act is also not made out because there is allegation in the complaint that the petitioner abused the complainant in public place. On these grounds, the learned counsel submitted that the impugned order is quashed.

On the other hand, the learned A.P.P. objected the prayer for the petitioner and submitted that in fact there is serious allegation against the petitioner that he used to sell the foodgrains in black market and that he assaulted the complainant abusing him in the name of his caste.

Perused the complaint application. From perusal of the impugned order dated 26.04.2012, it appears that the Court below found that the witnesses examined under Section 202 Cr.P.C. have all supported the case made in the complaint case and finding prima facie case under the above Sections the cognizance has been taken. So far the submission of the learned counsel that Section 409 is not applicable or that the offence under

the Atrocities Act is not made out, it may be stated that the same can be decided at the time of trial.

The Hon'ble Supreme Court in the case of *C.B.I. Vs. K.M. Saran 2008 (4) SCC 471* has held that '**High Court is not supposed to embark upon an enquiry whether the allegation in the FIR and the chargesheet are reliable or not and thereupon to render definite finding about truthfulness or veracity of the allegation. Whether allegation made in the FIR/ chargesheet taken on their face value and accepted in their entirety would prima facie constitute an offence for making out a case against the accused.**' Now, therefore, the question is as to whether Section 409 will apply or for any other Section will apply or that the offence alleged to have been committed under the Atrocities Act is not in public place, are all dependent on the evidence at the time of trial. Therefore, in exercise of inherent jurisdiction, I am not inclined to interfere with the impugned order and thus this Cr. Misc. application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

U			
---	--	--	--