

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.5238 of 2014

Arising Out of PS.Case No. -null Year- null Thana -null District- SARAN

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1. Mahendra Sharma son of Late Baijnath Sharma

2. Prashant Kumar son of Sri Mahendra Sharma

Both resident of village - Vishambher Pur, P.S.- Derni, District -Saran.

.... Petitioner/s

Versus

1. The State of Bihar.

2. Ajay Kumar Sharma son of Siya Ram Sharma, Resident of Village- Purna Dih,
P.S.- Derni, District - Saran.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mukesh, Advocate

For the State : Mr. Jharkhandi Upadhyay, APP

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 15-11-2016

This is an application for quashing of the order dated 5.9.2011 passed by the learned Judicial Magistrate, 1st Class, Chapra in Complaint Case No.70 of 2011 corresponding to Tr. No.2555 of 2013 by which cognizance of the offences punishable under Sections 420, 120B, 406 and 323 of the Indian Penal Code (for short 'IPC') has been taken against the petitioner.

2. The prosecution case is based on a complaint lodged by opposite party no.2 Ajay Kumar Sharma in the year, 2011. It has been alleged that the accused Prashant Kumar was known to the petitioner from before. He had opened computer centres at Derni and Maker



Bazar. He demanded Rs.30,000/- from the complainant for purchase of a computer. On his demand, the complainant gave him Rs.30,000/- on 8th March, 2009. Subsequently, he demanded Rs.20,000/- from the complainant for securing his appointment against the post of Utkarsh Shikshak. On his demand, Rs.20,000/- was also paid to him. The petitioner no.2 Prashant Kumar had assured for refund of Rs.30,000/- to the complainant but, on demand, he refused to pay back the amount. The complainant has alleged that his appointment also was not made as assured by petitioner no.2 Prashant Kumar. It is also alleged that when the complainant went to the house of the petitioners to demand the money, he was assaulted by the petitioners.

3. The complainant was examined on oath and in support of the complaint three witnesses, namely, Manohar Sharma, Vijay Kumar Sharma and Birbal Kumar Sharma were examined in course of inquiry under Section 202 of the Code of Criminal Procedure. On perusal of the complaint and on appreciation of statements of the complainant and the witnesses, the learned Magistrate vide order dated 5.9.2011 took cognizance of the offences punishable under Sections 420, 120B, 406 and 323 of the IPC.

4. It has been pleaded on behalf of the petitioners that apart from the ocular allegation, there is no other material to support the allegations made in the complaint. It has also been pleaded that the



allegations made in the complaint are malicious in nature. There is no iota of evidence as far as petitioner no.1 Mahendra Sharma is concerned. It has been submitted that the petitioner no.1 is a Headmaster of a primary school and is a respectable person of the society. The date of payment of Rs.20,000/- to the petitioner no.2 is also not made in the complaint. Lastly, it has been contended that at best it is a pure and simple case of money claim.

5. Learned counsel for the State has submitted that there is infirmity in the order by which the learned Magistrate has taken cognizance of the offences.

6. I have heard learned counsel for the petitioners and learned counsel for the State and perused the materials available on record. It is also true that so far as first payment of Rs.30,000/- is concerned, the same is said to have been made by the complainant to the opposite party no.2 on 8th March, 2009. However, no date is mentioned as far as the second payment of Rs.20,000/- is concerned. It would also be apparent from perusal of the complaint that though a legal notice was issued against the petitioners on 8th August, 2010, the accused persons promptly denied to have received any money vide their reply given on 8th September, 2010. It would further be apparent from perusal of the complaint that there is allegation that when the complainant went to demand money on 8th January, 2011, the

petitioner no.2 Prashant Kumar called his father and both of them assaulted him with fists and slaps and threatened him not to file any case. However, the complainant did not approach the police in this regard. The complaint has been filed belatedly on 11th November, 2011.

7. The ocular allegations made in the complaint have been denied in writing in response to the legal notice sent by the complainant. The dispute, if any, is of civil nature. A pure and simple case of money claim cannot be allowed to be settled through criminal prosecution.

8. Regard being had to the nature of the allegation, in my opinion, allowing the prosecution to continue would amount to an abuse of the process of the court. Accordingly, the impugned order dated 5.9.2011 passed in Complaint Case No.70 of 2011 corresponding to Tr. No.2555 of 2013 by the learned Judicial Magistrate, Chapra is set aside. The application stands allowed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	