

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.28233 of 2013

Arising Out of PS.Case No. -68 Year- 2012 Thana -ROHTAS COMPLAINT CASE District-
SASARAM (ROHTAS)

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Namo Narayan Pandey son of Late Deoki Nandan Pandey Resident Of Village
Minapur, P.S. Minapur, District Muzaffarpur.

.... Petitioner/s

Versus

1. The State Of Bihar.
2. Smt. Savita Devi wife of Krishnakant Rai Resident Of Village Dharpura, P.O.
Mujradh, P.S. Nokha, Dharpura, District Rohtas.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Hari Kishore Thakur

For the Opposite Party/s : Mr. Manoj Kumar

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 27-09-2016

Heard Sri Hari Kishore Thakur, learned counsel for the
petitioner and Sri Manoj Kumar, learned counsel, who has appeared
on behalf of the complainant /opposite party no. 2.

The petitioner , who at the relevant time was posted as out-
post in-charge of Dharpura O.P. has approached this Court
invoking its inherent jurisdiction under Section 482 of the Code of
Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.”) with a
prayer to quash an order dated 3.9.2012 passed by learned Judicial
Magistrate 1st Class, Sasaram (Rohtas) (hereinafter referred to as
“Magistrate”) in Complaint Case No. C -68 of 2012. By the said
order, the learned Magistrate has taken cognizance of offence under

Section 323 and 379 of the Indian Penal Code.

Short fact of the case is that the opposite party no. 2 , who is wife of a mini rice miller , filed a complaint in the court of learned Chief Judicial Magistrate, Sasaram , Rohtas , which was numbered as Complaint Case No. 68 of 2012/ Tr. No. 2340 of 2012. In the complaint the petitioner was arrayed as the sole accused on an allegation of commission of offence under Section 384, 120B, 379, 323, 504 of the Indian Penal Code. It was disclosed in the complaint petition that the complainant's husband was running a mini rice mill with valid license, however the petitioner being police officer was demanding Rs. 50000/- from the complainant on the plea that her husband was running rice mill. She was threatened, abused and also assaulted by the petitioner. The complaint petition further discloses that the complainant had orally made complaint to the Superintendent of Police but no step was taken. Thereafter, on 13.1.2012 the petitioner and police constables entered into the rice mill of her husband and unauthorizedly seized three drums of diesel / kerosene oil. She alleged that while seizing the articles the labourers of the rice mill were also assaulted by the petitioner. After filing of the complaint petition the complainant was examined on S.A. and in support of complaint case, from the complainant's side two witnesses were examined who supported the allegation made in the

complaint petition and finally the learned Magistrate has passed the order of cognizance which has been assailed in the present petition.

Sri Hari Kishore Thakur, learned counsel for the petitioner by way of referring to the complaint petition submits that though in the complaint petition it was alleged that first occurrence had taken place on 10.1.2012 and thereafter on 13.1.2012 again the petitioner had committed offences and seized the said diesel / kerosene oil, the present complaint was filed on 17.1.2012. He submits that reason for filing the complaint by the complainant was not for prosecuting the petitioner but to create defence in a case in which the husband of the complainant was made the sole accused. By way of referring to Annexure- 2 to the present petition i.e. photo copy of the F.I.R. of Sasaram (Dharmapura) Nokha P.S. Case No. 4 of 2012 which was registered on 14.1.2012 against the husband of the complainant namely Sri Krishna Rai on an allegation of commission of offence under Section 7 of the Essential Commodities Act, learned counsel for the petitioner submits that the Block Supply Officer, Nokha had received certain information regarding unauthorizedly keeping of huge quantity of kerosene oil in the mini rice mill of the husband of the complaint. Thereafter a raid was conducted by the Block Supply Officer , Nokha . In the said raiding team petitioner being officer of the out- post (O.P. in- charge) along with constables had rendered



assistance to the Block Supply Officer. During raid huge quantity of kerosene oil to the tune of 600 liters kept in three drums were recovered. As per information given by the Block Supply Officer, under the provisions of Bihar Unification Order, 1984 keeping more than 20 liters of kerosene oil was in violation of Section 3 of the Essential Commodities Act and for such offence the husband of the complainant was liable to be prosecuted for offence under Section 7 of the Essential Commodities Act. He submits that three drums of kerosene oil which has also been referred in the present complaint petition was officially seized by the Block Supply Officer and from the F.I.R. it is evident that the said seized articles were handed over on Zimmanama to one Sri Shyam Narayan Dubey, one of the P.D.S. dealer. On the basis of written complaint of the Block Supply Officer an F.I.R. was lodged against the husband of the complainant. He further submits that in the said case during investigation accusation against the husband of the complainant was found true and charge sheet was subsequently submitted. In sum and substance it has been argued that initiation of criminal proceeding against the petitioner is apparently malicious and malafide. He submits that in view of the cases categorized by the Hon'ble Apex Court in a case reported in **1992 Supp (1) Supreme Court Cases 335 (STATE OF HARYANA AND OTHERS Versus BHAJAN LAL AND**

OTHERS) the order of cognizance in the present petition is liable to be set aside.

Sri Manoj Kumar, learned counsel for the complainant opposing the prayer submits that whatever is being argued on behalf of the petitioner can be considered at appropriate stage; not at preliminary stage i.e. at the stage of cognizance. He submits that as per complaint case, which has been corroborated by the witnesses during enquiry, there is specific case against the petitioner and the learned Magistrate has committed no error in passing the impugned order.

Besides hearing learned counsel for the parties I have also perused the materials available on record including the Lower Court Record. On perusal of the complaint petition as well as copy of the F.I.R. which was lodged against the husband of the complainant it is evident that complaint petition was filed with a view to create a defence in a case in which the husband of the complainant has been made accused. In the complaint petition, the complainant has asserted that firstly on 10.1.2012, it was alleged that the petitioner was threatening and demanding illegal money from the complainant on the plea that her husband was running and earning from a mini rice mill. If for the time being this allegation is taken note of, it is difficult to comprehend as to why the petitioner instead of



approaching the husband of the complainant who was the actual rice mill owner, was not approached for fulfilling illegal demand and secondly in the complaint petition the complainant has alleged that on 10.1.2012 she was abused, assaulted and illegal demand was made by the petitioner. She states in the complaint petition that she had orally informed the Superintendent Of Police. If such occurrence had taken place, in normal course the complainant would have filed at least a written complaint. In such a situation there was no question for making oral complaint. Thereafter finally it has been alleged that on 13.1.2012 the petitioner with others had forcibly and illegally seized three drums of diesel / kerosene oil from the rice mill of the husband of the complainant. As per allegation in the complaint petition this occurrence had taken place on 13.1.2012, whereas complaint petition was filed on 17.1.2012. In the case as per Annexure -2 F.I.R. for the same occurrence, i.e. recovery of three drums of kerosene oil was lodged on 14.1.2012 vide Nokha P.S. Case No. 4 of 2012, in which the husband of the complainant was made the sole accused for commission of offence under Section 7 of the Essential Commodities Act. On perusal of both complaint petition as well as F.I.R. there is no difficulty in coming to the conclusion that the present criminal proceeding was initiated against the petitioner maliciously and allowing such proceeding would amount to allowing

abuse of the process of the court. The court is in agreement with the submission of learned counsel for the petitioner that the case in hand is squarely covered by the judgment of the Apex Court in Bhajan Lal Case (Supra).

In view of the facts and circumstances, there is no reason to allow the order of cognizance and proceeding against the petitioner to continue. Accordingly, the order of cognizance dated 3.9.2012 passed in Complaint Case No. C-68 of 2012 is hereby set aside and the petition stands allowed.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01-10-2016
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