

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No. 25300 of 2013**

Arising Out of PS.Case No. -2436 Year- 2008 Thana -MUZFFARPUR COMPLAINT CASE District-  
MUZAFFARPUR

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Abhay Kumar @ Abhai Kumar S/O Late Kalika Prasad, Resident of L/29, Parao  
Pokhar, Lane No. 2, Aam Gola, Muzaffarpur.

.... .... Petitioner

Versus

1. The State of Bihar
2. Nutan Press, through Devendra Prasad Sharma, Tilak Maidan Road,  
Muzaffarpur.

.... .... Opposite Parties

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**Appearance :**

For the Petitioner/s : Mr. Gyan Prakash, Advocate

For the Opposite Party/s : Mr. Damodar Prasad Tiwary, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR**

ORAL JUDGMENT

**Date: 26-09-2016**

Heard Sri Gyan Prakash, learned counsel for the  
petitioner and Sri Damodar Prasad Tiwary, learned Addl. Public  
Prosecutor.

2. The sole petitioner, who at the relevant time was  
posted as Principal, L.S. College, Muzaffarpur, has approached this  
Court invoking its inherent jurisdiction under Section 482 of the Code  
of Criminal Procedure, 1973 (in short "Cr.P.C.") with a prayer to quash  
an order dated 05-01-2011 passed in Complaint Case No. C-2436 of  
2008, Trial No. 4066 of 2012 by learned Judicial Magistrate 1<sup>st</sup> Class,  
Muzaffarpur (hereinafter referred to as 'Magistrate'). By the said order,  
the learned Magistrate has taken cognizance of offence under Section  
500 of the Indian Penal Code and directed for summoning the accused

persons including the petitioner.

3. The petitioner has further prayed for quashing of an order dated 29<sup>th</sup> September, 2012 passed by learned Additional District & Sessions Judge – II, Muzaffarpur (hereinafter referred to as 'Addl. Sessions Judge') in Criminal Revision No. 49 of 2011, whereby, the revision preferred by the petitioner against the order of cognizance dated 05-01-2011 was dismissed.

4. Earlier, in this case, notice was directed to be issued to opposite party no. 2, however; the same returned with an endorsement that complainant/opposite party no. 2 died. Thereafter, the petition was admitted by order dated 30-06-2016 for hearing and Lower Court Record was also summoned.

5. Short fact of the case is that the complainant/opposite party no. 2 had filed a complaint in the court of learned Chief Judicial Magistrate, Muzaffarpur (hereinafter referred to as 'C.J.M.'), which was registered, vide Complaint Case No. C-2436 of 2008. In the complaint petition, besides petitioner, who was Principal, L.S. College and Director, Industrial Microbiology Course, other two persons were arrayed as accused, namely Sri C.P.Shukla, Department of Botany, B.R.A. Bihar University, Muzaffarpur and Sri Anil Kumar, Department of Botany, L.S.College, Muzaffarpur. It was alleged in the complaint petition that the petitioner, being Member of Advisory Committee to Industrial Microbiology Course running in the Department of Botany,



L.S.College, in its meeting dated 07-12-2004 took a decision to blacklist one Manisha and their sister concerns. It was clarified that sister concern means Nutan Press and other two firms namely University Book Centre and Bharat Scientific Syndicate. In sum and substance, it was alleged that even after notice, the Advisory Committee did not withdraw the earlier decision and as per complaint, the accused persons had committed offences under Sections 500 and 501 of the Indian Penal Code. The complaint petition was filed on 16-09-2008. The learned C.J.M., after recording statement of the complainant on S.A., directed for conducting an enquiry under Section 202 of the Cr.P.C. He directed the concerned Superintendent of Police to get the matter enquired by the S.H.O. of the concerned police station by its order dated 16-10-2008. It is evident from the Lower Court Record that subsequently, in the year 2010, a request was made by the complainant to the learned C.J.M. for withdrawing the complaint from the office of the Superintendent of Police and conduct enquiry itself. Thereafter, by order dated 14-05-2010, the learned C.J.M. directed the concerned police to stop enquiry and return the complaint petition and by the same order, exercising power under Section 192 of the Cr.P.C., transferred the record to the court of Smt. Reshma Verma, learned Judicial Magistrate 1<sup>st</sup> Class, Muzaffarpur for its enquiry and disposal. Finally, after the matter was transferred to the learned Judicial Magistrate 1<sup>st</sup> Class for its disposal, two witnesses were got examined



during enquiry and certain documents such as legal notice etc. were got exhibited and the learned Magistrate by the impugned order i.e. order dated 05-01-2011 took cognizance of offence under Section 500 of the Indian Penal Code and directed for summoning the accused persons. The said order was initially assailed by the petitioner before the revisional court, however; the learned revisional court i.e. learned Addl. Sessions Judge by its order dated 29<sup>th</sup> September, 2012 dismissed the revision i.e. Cr. Revision No. 49 of 2011. In the present petition, both orders have been assailed by the petitioner.

6. At the very outset, Sri Gyan Prakash, learned counsel for the petitioner, assailing the orders, submits that the same complainant besides the present complaint had filed one another complaint, vide Complaint Case No. 1331 of 2008. In that case also, it was alleged that in the year 2004 itself, the petitioner and others had blacklisted his firm. In the said case, the order of cognizance was passed, which was assailed by the petitioner, vide Criminal Revision No. 109 of 2009. The said revision was allowed primarily on the ground that the complaint petition was filed after about four years from the alleged dated of occurrence. It has been highlighted that the complaint in the present case was filed on 16-09-2008 on an allegation of commission of offence under Section 500 of the Indian Penal Code, which according to complaint petition itself, was committed firstly on 07-12-2004. Meaning thereby that complaint petition was filed after



four years from the date of occurrence. By way of referring to provision contained under Section 500 of the Indian Penal Code, it has been highlighted that for offence under Section 500 of Indian Penal Code, maximum punishment is imprisonment for two years and in view of Section 468(2)(c) of the Cr.P.C. for taking cognizance, maximum period of limitation is three years. According to learned counsel for the petitioner, beyond the period of limitation, order of cognizance was passed, which was not condoned by specific order and as such, order of cognizance is liable to be set aside on this ground also. He further submits that ofcourse in the complaint petition, it was alleged that the petitioner was one of the Member of Advisory Committee in taking decision to blacklist the complainant's firm, the fact remains that neither in complaint petition nor during enquiry, any document was brought on record to show blacklisting of the complainant's firm. According to learned counsel for the petitioner, even on fact, there was no element for application of Section 500 of the Indian Penal Code. Learned counsel for the petitioner has specifically referred to an order dated 01-02-2010 passed in Criminal Revision No. 109 of 2009, which has been brought on record as **Annexure - 2** to the present petition to satisfy the Court that in identical situation, in one of another complaint filed by the complainant, in which, petitioner was also made accused, the order of cognizance has been set aside.

7. Sri Damodar Prasad Tiwary, learned Addl. Public

Prosecutor has vehemently opposed the prayer. He submits that from the order itself, it appears that the learned Magistrate, at the time of passing order of cognizance, had condoned the delay.

8. Besides hearing learned counsel for the parties, I have also perused the materials available on record. Fact remains that in the complaint petition itself, there was specific assertion that petitioner had taken step for blacklisting the concerned firm, which decision, as alleged, was taken on 07-12-2004. It is also not in dispute that complaint was filed on 16-09-2008 i.e. after expiry of period of limitation, as prescribed under Section 468(2)(c) of the Cr.P.C. Moreover, on perusal of the record, the Court is satisfied that there is no document to substantiate that there was any communication showing commission of offence of defalcation. Meaning thereby that complainant had not brought on record any publication, by which, the complainant was aggrieved.

9. In view of the fact, particularly; the fact that the order of cognizance was passed after the period of limitation, there is no reason to allow either of the orders.

10. Accordingly, the order of cognizance dated 05-01-2011 passed in Complaint Case No. C-2436 of 2008, Trial No. 4066 of 2012 by the learned Judicial Magistrate 1<sup>st</sup> Class, Muzaffarpur as well as order dated 29-09-2012 passed by learned Additional District & Sessions Judge – II, Muzaffarpur in Criminal Revision No. 49

of 2011 are hereby set aside.

11. The petition stands allowed

**(Rakesh Kumar, J.)**

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