

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.24512 of 2013**

Arising Out of PS.Case No. -1059 Year- 2010 Thana -NAWADAH COMPLAINT CASE District-  
NAWADA

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Shiv Kumar Prasad S/O Late Bakhori Bagat @ Ramdhani Prasad, aged about 67  
years Resident Of Village- Wrisaligang Thana Road, P.O.+ P.S.- Warisaligang,  
District- Nawada

.... .... Petitioner/s

Versus

1. The State Of Bihar
2. Hari Mistri, S/o Late Karu Mistri, resident of Warisaliganj, P.S. Warisaliganj  
District Nawada

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : **Mr. Bankey Bihari Singh**  
For the Opposite Party/s : **Mr. Jharkhandi Upadhyaya**  
**Mr. Krishnadeo Raj**

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

ORAL JUDGMENT

**Date: 20-09-2016**

Heard Sri Bankey Bihari Singh, learned counsel for the  
petitioner , Sri Jharkhandi Upadhyaya, learned A.P.P. as well as Sri  
Krishnadeo Raj, learned counsel who has appeared on behalf of the  
complainant /opposite party no. 2.

The sole petitioner, 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 2.2.2013 passed by learned Chief Judicial  
Magistrate , Nawada in Complaint Case No. 1059 of 2010 whereby  
he has taken cognizance of offence under Sections 323, 385, 379/ 34

of the Indian Penal Code and directed for summoning the accused persons which includes the petitioner.

Short fact of the case is that the opposite party no. 2 filed a complaint while he was in judicial custody. The said complaint was sent through Assistant Jailor, Divisional Jail, Nawada to the learned Chief Judicial Magistrate, Nawada which was registered as Complaint Case No. 1059 of 2010. In the complaint petition the opposite party no. 2 had alleged that he was running a school in the name of Gandhi Bal Vikas Madhya Vidyalaya, Warisaliganj since 1968. On the date of alleged occurrence i.e. 21/8/2010 since it was Saturday after closure of the school at 10.30 A.M. he was at his residence and in the meanwhile, at about 3.00 P.M. the Block Education Extension Officer namely Sri Birendra Singh with present petitioner and other three unknown persons arrived at his residence and demanded illegal gratification on the plea that the complainant was earning a lot by running school. Since the demand was not fulfilled the complainant was forcibly taken by the Block Education Extension Officer as well as this petitioner to the school premises and forcibly school was unlocked, number of documents were taken away forcibly and complainant was booked as accused in a false criminal case. It was alleged that in the said occurrence the petitioner had forcibly snatched his golden chain. After



the complaint petition was received the complainant was examined on S.A. and at the time of his examination on S.A. he was produced from jail. In support of the complaint two witnesses who were none else but son and wife were got examined as enquiry witnesses and thereafter by the impugned order the petitioner along with Birendra Kumar Singh, the Block Education Extension Officer / inspector of school were summoned. The said order has been assailed in the present petition.

Sri Bankey Bihari Singh, learned counsel for the petitioner at the very outset by way of referring to the statement of the complainant/ opposite party no. 2 which was recorded on S.A. submits that the complainant himself had stated that he had initiated the present case against the petitioner since earlier petitioner had filed a case against him. Taking clue from the statement of the complainant, learned counsel for the petitioner submits that the present case was falsely instituted against the petitioner which can be categorized as malicious prosecution. He submits that if the court is satisfied that it is a malicious prosecution then in view of law laid down by the Apex Court in a case reported in **1992 Supp (1) SCC 335 (State of Haryana and Ors. vs Bhajan Lal & Ors)** the order of cognizance can be interfered with by this court. He further submits that the complainant by way of running a school was issuing



forged certificate which was being objected by the petitioner repeatedly. The petitioner had filed number of complaint before the authority concerned. Even in the Janta Darbar of Hon'ble the Chief Minister complaint was filed by the petitioner, thereafter the District Magistrate had issued direction to the concerned authority to enquire and lodge F.I.R. Learned counsel for the petitioner has tried to persuade the court to examine Annexure – 4 to the petition i.e. a copy of letter dated 2580 dated 22<sup>nd</sup> August 2008 issued by the District Magistrate to District Superintendent of Education, Nawada wherein the complaint of petitioner, who is a retired army personnel was taken note of and the District Magistrate had directed the District Superintendent of Education to lodge F.I.R. within three days. He submits that even after the order of the District Magistrate since no action was taken against the complainant, the petitioner was constrained to approach this court by filing a writ petition which was numbered as CWJC No. 9677 of 2009. The said writ petition was disposed of on 13/8/2009 by a division bench of this court. This court observed that the respondent no. 4 and 5 i.e. the District Magistrate, Nawada and Superintendent of Police, Nawada may look into the matter and take appropriate action in accordance with law. He submits that only after the order of the division bench of this court appropriate action was taken by the concerned authority



i.e. the Block Education Extension Officer and a raid was conducted in the school of the complainant wherein several irregularities were found. Learned counsel for the petitioner again has drawn my attention to the statement of the complainant recorded on S.A. to the effect that complainant himself had admitted that he had issued transfer certificates through a book which was issued from the office of District Superintendent of Education. He submits that against the complainant an F.I.R. was lodged for serious offences and he was taken into custody and also remanded to judicial custody. By way of referring to complaint petition as well as S.A. he submits that it is evident that the complainant was taken into custody and while in jail custody maliciously complainant had filed the present complaint petition. Learned counsel for the petitioner has further placed reliance on an order passed by this court on 14<sup>th</sup> July 2015 in Cr. Misc. No. 16335 of 2013. He submits that in case of one of the co -accused in the present complaint case namely Birendra Kumar Singh, who had conducted raid in the school premises of the complainant in the capacity of Block Education Extension Officer, this court by its order dated 14/7/2015 has quashed the order of cognizance and summoning so far accused Birendra Kumar Singh is concerned. He submits that this court had noticed the fact that co- accused Birendra Kumar Singh had taken action against the complainant of the present



case. This court while quashing the order of cognizance in respect of co -accused Birendra Kumar Singh has observed that the present proceeding was vexatious , absurd and inherently improbable. He has referred to Annexure - 8 to the supplementary affidavit which was filed on 5<sup>th</sup> July 2016. On aforesaid ground a prayer has been made to quash the order of cognizance so far petitioner is concerned.

Sri Krishnadeo Raj, learned counsel for the opposite party no. 2/ complainant has vehemently opposed the present petition . He submits that from perusal of the complaint petition itself there is specific case against the petitioner. He submits that in complaint petition there is specific accusation so far petitioner is concerned that he was also one of the person who assaulted the complainant and he forcibly snatched golden chain of the complainant. Accordingly, as per learned counsel for the complainant, since complaint petition itself discloses offences there is no error in the impugned order passed by the learned Magistrate.

Besides hearing learned counsel for the parties I have also perused the material available on record. The fact that the present complaint was filed from jail is not in dispute. The complainant was got examined on S.A. while he was produced from jail itself. Meaning thereby that once the complainant was taken into custody on an allegation of committing fraud in a police case which was



mainly initiated as per steps taken by the petitioner, the court is of the opinion that the present complaint was filed maliciously. Moreover, in his statement on S.A. the complainant himself has disclosed that he had lodged the present case since earlier petitioner had initiated legal action against him. The submission regarding malicious prosecution is evident from the fact that in case of co-accused a bench of this court in Cr. Misc. No. 16335 of 2013 while allowing the petition had categorically observed that the proceeding in the present complaint was vexatious. It would be appropriate to quote last paragraph of the order dated 14/7/2015 passed in Cr. Misc. No. 16335 of 2013 which is quoted hereinbelow:-

**“It is apparent from the complaint petition itself that on 21.08.2010, petitioner was booked and from Annexure – 2, it happens to be in connection with Warsaliganj P.S. Case No. 143 of 2010 launched at the behest of petitioner, Birendra Kumar Singh, Block Education Officer. It is also evident from Annexure – 8 that District Magistrate had identified the school of the opposite party no. 2, which was engaged in illegal activities and further, in pursuance of order dated 17.04.2008 passed in CW.J.C. No. 11774 of 2004, petitioner was directed to inspect as well as to launch a criminal case in case, so needed. Therefore, presence of petitioner at the place of opposite party no. 2 happens to be in due discharge of official duty and on account thereof, whatever been alleged, appears to be a vexatious proceeding as well as the allegation is found so absurd and inherently improbable that it looks difficult to accept**

**the same and consequent thereupon, the order impugned dated 02.02.2013 is quashed to the extent of petition only.”**

Since in case of one of the co- accused the present proceeding in complaint petition has been termed as vexatious and malicious, there is no reason to allow the present proceeding to continue against the petitioner . Accordingly, the impugned order i.e. Order dated 2.2.2013, passed by learned Chief Judicial Magistrate, Nawada , in Complaint Case No. 1059 of 2010 so far petitioner is concerned, is hereby set aside and the petition stands allowed.

**(Rakesh Kumar, J)**

Praful/-

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