

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.27032 of 2013

Arising Out of PS.Case No. -857 Year- 2011 Thana -WEST CHAMPARAN COMPLAINT District-
WESTCHAMPARAN(BETTIAH)

Vijay Kumar son of Late Bindeshwari Prasad Resident Of Village And P.O.
Kanhauli Bazar, Via Bhutahi, District Sitamarhi, At Present Block Development
Officer, Bhitaha, District West Champaran.

.... Petitioner/s

Versus

1. The State Of Bihar.
2. Md. Jamaluddin Ansari son of Late Dost Mohammad Ansari Resident Of
Village Redaha, P.S. Bhitaha O.P., District West Champaran.

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ravi Ranjan
For the Opposite Party/s : Mr. Narendra Kumar Singh
Mr. Zainul Abedin

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 11-08-2016

Heard Sri Ravi Ranjan, learned counsel for the petitioner,
Sri Narendra Kumar Singh, learned A.P.P. and Sri Zainul Abedin,
learned counsel for the complainant.

It was submitted by learned counsel for the petitioner that
offences under which the learned Magistrate has taken cognizance
are triable by the Gram Kutchery and jurisdiction of criminal court
is bared under Section 113 of the Bihar Gram Panchayat Raj Act
2006. On merit it was submitted by learned counsel for the petitioner



that prior to filing of the present complaint the petitioner in the capacity of Block Development Officer had asked show cause from the complainant of the present case regarding irregularity / illegality committed in distribution of pension. It has also been argued that subsequent to filing of the present complaint the Deputy Development Commissioner requested the Postal Superintendent, Bettiah to take stern action against the complainant who at the relevant time was posted as Post Master, Redaha Panchayat , Chilbaniya. Learned counsel for the petitioner has persuaded the Court to examine Annexure -2 and Annexure -5 to the present petition . Besides this by way of referring to the facts disclosed in the complaint petition it has been argued that maliciously the present complaint was filed and the learned Magistrate ignoring the restriction imposed under section 113 of the Bihar Gram Panchayat Raj Act 2006 has taken cognizance of offence under section 504 and 506 of the Indian Penal Code which was required to be tried by the Gram Kutchery. Accordingly a prayer has been made to set aside the impugned order.

Learned counsel for the complainant as well as learned A.P.P. has vehemently opposed the prayer of the petitioner.

Besides hearing learned counsel for the parties I have also perused the material available on record. Of course while hearing a



petition under section 482 of the Code of Criminal Code that too at the stage of cognizance normally it is not required for this Court to examine the documents brought on record. However in view of peculiar facts and circumstances of the present case particularly the fact that petitioner was working as Block Development Officer and since he had taken action against the complainant who was Post Master and there was allegation of committing irregularity in respect of disbursement of pension, this Court was persuaded to examine those documents i.e. Annexure -2 as well as Annexure -5 to the present petition. Annexure -2 is a letter contained in memo no. 706 dated 5.8.2011 whereby show cause was asked for from the concerned Post Master and Annexure -5 is a photo copy of the letter contained in memo no. 71 dated 10.1.2012 (Annexure -5) issued under the signature of Deputy Development Commissioner, West Champaran, Bettiah addressed to the Postal Superintendent, Bettiah. The subject of the said letter speaks regarding irregularity committed by the Post Master, Md. Jamaluddin Ansari (complainant of the present case) through which request was made to take stern action against the complainant for committing irregularity by the complainant in implementation of different schemes of the Government. The first show cause was issued on 5.8.2011. Immediately thereafter the present complaint was filed against the



petitioner by the complainant. Even the complainant had alleged commission of offence under Sections 323, 384, 504, 506 of the Indian Penal Code against the petitioner in the complaint. He had also alleged that forcibly petitioner took Rs. 3000/- from the upper pocket of the complainant. The allegation made in the complaint petition apparently makes it clear that the complaint was filed maliciously against the petitioner with a view to wreak vengeance. The learned Magistrate did not accept the allegation in respect of offence under other sections i.e. section 323, 384 of the Indian Penal Code however he took cognizance of offences under sections 504 and 506 of the Indian Penal Code. The provision contained in Section 106(a) of the Bihar Gram Panchayat Raj Act 2006 speaks that offence under sections 504 and 506 of the Indian Penal Code besides some other minor offences are within the jurisdiction of Gram Kutchery and Section 113 of the Bihar Gram Panchayat Raj Act 2006 restricts courts other than Gram Kutchery to take cognizance. In view of the facts and circumstances particularly the fact that maliciously the complainant had proceeded against the petitioner and the fact that offence for which cognizance order has been passed is triable by the Gram Kutchery and without dispensing with the jurisdiction of Gram Kutchery by a reasoned order the learned Magistrate was not required to take cognizance for such offence.

Accordingly, the order impugned is set aside and entire proceeding in Complaint Case No. 857 of 2011 , Tr. No. 244 of 2013 pending in the court of Additional Chief Judicial Magistrate Bagaha, West Champaran / concerned Magistrate is hereby set aside.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	18-08-2016
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