

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.33181 of 2013

Arising Out of PS.Case No. -88 Year- 2011 Thana -SIKTI District- ARRARIA

=====

1. Shiv Sundar Bharti S/O Late Mahant Parmanand Bharti Resident Of Village-
Math Tola Masunda, Police Station- Sikti, District- Araria

.... Petitioner/s

Versus

1. The State Of Bihar
2. Shri Nand Lal Rishideo S/O Late Saryug Rishideo Resident Of Math Tola
Masunda, Police Station- Sikti, District- Araria

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Arun Prasad Ambastha, Adv.

For the Opposite Party/s : Mr. (Dr.) Mayanand Jha, Addl.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 04-08-2016

This application under Section 482 of the Code of Criminal Procedure (for short 'CrPC') is directed against the order of cognizance dated 29.09.2012 passed by the learned Chief Judicial Magistrate at Araria in G.R. No. 2182 of 2011 arising out of Sikti P.S. Case No. 88 of 2011 under Section 504 of the Indian Penal Code (for short 'IPC') and the entire proceeding of the aforementioned case.

2. The case of the prosecution, in brief, is that the opposite party no.2 Nand Lal Rishideo lodged a written report on 19.09.2011 before the S.H.O. of Sikti Police Station alleging therein that he along with Md. Wasim jointly took settlement of Pond No.3 at Masunda



from the Fisheries Department for fish rearing. He has invested Rs.10,000/-. On 15.09.2011 at about 10.00 a.m., Siya Ram Sada with seven others including the petitioner came there and after abusing the informant looted away one and a half quintal of fish valued at Rs.15,000/- and on protest accused Siya Ram Sada took away a fishing net valued at Rs.6,000/-. All the accused pushed the informant and extended threat to leave the pond otherwise he would be killed. It is also stated that there has been delay since a panchayati was to be convened which did not take place.

3. On the basis of the allegation made above regarding the occurrence which took place on 15.09.2011, Sikti P.S.Case No. 88 of 2011 was registered on 19.09.2011 under Sections 447, 341, 342, 323, 504 and 379/34 of the IPC against Siya Ram Sada and seven others including the petitioner.

4. The police took up investigation and on completion of investigation the allegation with regard to taking away of the fish or fishing net was not found true and it was stated in the police report that all the allegations except of abusing are incorrect and hence the police report under Section 173(2) of the CrPC was submitted only for the offence punishable under Section 504 of the IPC.

5. On perusal of the police report, the learned Chief Judicial Magistrate at Araria took cognizance of the offence under



Section 504 of the IPC vide order dated 29.09.2012 against the accused persons named in the FIR holding that from perusal of the case diary a prima facie case is made out under Section 504 of the IPC. After cancelling the jurisdiction of Gram Kachahari, the case was transferred for disposal and summons were ordered to be issued fixing 27.11.2012 for appearance of the accused persons.

6. It is submitted by Mr. Arun Prasad Ambastha, learned counsel for the petitioner that the impugned order taking cognizance of the offence is bad in law as also on facts. He has submitted that for constituting an offence punishable under Section 504 of the IPC, it is required that the complainant/informant must mention the actual words of abuse which were used by the accused and which amounted to intentional insult to him. He has submitted that it is also required that the informant must give out in his complaint/written report that the accused intended or knew that the insulting words used by them were likely to cause the informant either to break the peace or commit any other offence.

7. He has submitted that the only allegation in the written report is that the accused persons abused the informant. The informant has not given out actual words of abuse in his written report which were alleged to have been used by the accused. Not only this, the informant has not stated in the written report that he was

provoked by the abuse.

8. On the other hand, Dr. Mayanand Jha, learned Additional Public Prosecutor appearing for the State has submitted that though the actual word of abuse has not been mentioned in the written report, the same in itself would not exonerate the accused persons from being prosecuted for the offence punishable under Section 504 of the IPC. He has submitted that from perusal of the allegations made in the FIR, it would be apparent that the accused persons had used abusive language. He has also submitted that the prosecution may prove before the court by leading evidence during trial that abusive words used, as alleged in the FIR, were intended to insult the informant. Hence, at this stage, it cannot be said that the order passed by the learned Chief Judicial Magistrate is bad in law.

9. I have heard respective counsel for the parties and perused the record.

10. Section 504 of the IPC under which cognizance has been taken by the learned Chief Judicial Magistrate reads thus :-

“504. Intentional insult with intent to provoke breach of the peace —

Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

11. From a reading of Section 504 of the IPC, it would be clear that the essential ingredients of the offence are as under :

- (1) That the accused insulted some person;
- (2) That he did so intentionally;
- (3) That he thereby gave provocation to that person;
- (4) That he intended, or knew that it was likely that such provocation would cause that person to break the peace or to commit any other offence.

12. Mere abuse unaccompanied by an intention to cause breach of peace or knowledge that breach of peace is likely that such provocation would cause that person to break the peace or to commit any other offence does not come within the offence as defined under Section 504 of the IPC. A vague allegation that the accused abused the opposite party in filthy language would not be sufficient to attract the ingredients of Section 504 of the IPC. In order to attract the ingredients of the offence under Section 504 of the IPC, it would be necessary that actual words used or supposed to have been used should be mentioned in the complaint/written report otherwise it would be extremely difficult for the court to decide whether or not the words used amounted to intentional insult. Also, the words used which amounted to intentional insult should be such that it intended to break the peace.

13. In the present case, learned counsel for the petitioner has rightly submitted that no offence under Section 504 of the IPC is made out as the informant has not given out the actual words of abuse in his written report and the informant has nowhere disclosed that the insulting words used by the accused had provoked him or that the accused intended or knew that the provocation was likely to cause the informant either to break the peace or to commit an offence.

14. In view of the discussions made hereinabove, the impugned order dated 29.09.2012 passed by the learned Chief Judicial Magistrate at Araria in G.R. No. 2182 of 2011 arising out of Sikti P.S. Case No. 88 of 2011 cannot be sustained. It is set aside, accordingly. As a consequence of quashing of the impugned order dated 29.09.2012, the entire proceedings of the aforementioned case are also quashed.

15. The application stands allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	AFR
CAV DATE	-----
Uploading Date	08-08-2016
Transmission Date	08-08-2016