

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.307 of 2016

Arising Out of PS. Case No. -1117 Year- 2015 Thana -SAMASTIPUR COMPLAINT CASE
District- SAMASTIPUR

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1. BIMAL KUMARI, D/O VISHESHWAR PD. SINGH ADHYAKSH, KALYAN NARI SHAKTI MAHILA VIKASH SWABLAMBI SAHKARI SAMITTEE LTD. C/O RAMDYAL MAHTO, VILLAGE-LADAURA, P.S.-KALYANPUR DIST. -SAMASTIPUR.
 2. MANOJ KUMAR PANDEY, SON OF SHIV KUMAR PANDEY FDE, KALYAN NARI SHAKTI MAHILA VIKASH SWABLAMBI SAHKARI SAMITTEE LTD. C/O RAMDYAL MAHTO, VILLAGE-LADAURA, P.S.- KALYANPUR, DIST.-SAMASTIPUR,

.... PETITIONER/S

VERSUS

1. THE STATE OF BIHAR.
2. ABHISHEK KUMAR, SON OF SRI MAHENDRA PRASAD SINGH, SECRETARY, TATHASTU, SAMAJIK KANUNI SANGATHAN, ABHISHEK COMPLEX, ROOM NO.07, LADAURA, P.S.- KALYANPUR, DIST.-SAMASTIPUR.

.... OPPOSITE PARTY/S

WITH

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Criminal Miscellaneous No. 4135 of 2016

Arising Out of PS. Case No. -1117 Year- 2015 Thana -SAMASTIPUR COMPLAINT CASE
District- SAMASTIPUR

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MANOJ KUMAR @ MANOJ KUMAR SINHA AGED ABOUT 48 YEARS, SON OF TAPESHWARI PRASAD MALTIYAR, RESIDENT OF - NAYA TOLA, MAHISOURI, JAMUI, P.S.- JAMUI, DISTRICT- JAMUI AT PRESENT POSTED AS DISTRICT PROJECT MANAGER, WOMEN DEVELOPMENT CORPORTATION, SAMASTIPUR, AT PRESENT LAKHISARAI.

.... PETITIONER/S

VERSUS

1. THE STATE OF BIHAR.
2. ABHISHEK KUMAR, AGED ABOUT 26 YEARS, SON OF MAHENDRA PRASAD SINGH, SECRETARY, TATHASTU, SOCIAL LEGAL ORGANIZATION, ABHISHEK COMPLEX, ROOM NO.7, LADURA, P.S.- KALYAPUR, DISTRICT- SAMASTIPUR (COMPLAINANT).
3. VIMLA KUMARI, AGED ABOUT 35 YEARS, CHAIRPERSON, KALYANI NARI SHAKTI MAHILA VIKASH SWALAMBI SAHKARI SAMITI LIMITED (ON SELF SUPPORTING CO-OPERTATIVE SOCIETY) C/O- RAM DAYAL MAHTO, VILLAGE- LADAURA, P.S.- KALYANPUR, DISTRICT- SAMASTIPUR (ACCUSED NO.1).
4. MANOJ KUMAR PANDEY, AGED ABOUT 38 YEARS, F.D.I. (FOREST DIVISION INVESTIGATION) KALYANI NARI MAHILA SHAKTI VIKASH SWALAMBI SAHKARI SAMITI LIMITED, C/O- RAM DAYAL MAHTO, VILLAGE- LADAURA, P.S.- KALYANPUR, DISTRICT- SAMASTIPUR (ACCUSED NO.2)

.... OPPOSITE PARTY/S

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Appearance:

(In Cr. Misc. No.307 of 2016)

For the Petitioner/s

:

Mr. Alok Kumar, Adv.

Mr. Prabhat Ranjan Singh, Adv.



For the State	:	Mr. Prabeen Kumar Singh, Adv.
(In Cr. Misc. No.4135 of 2016)	:	Mr. Lallan Kumar, APP
For the Petitioner/s	:	Mr. Binod Kumar, Adv.
For the State	:	Mr. Renuka Ratnakar, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

C.A.V. ORDER

Date: 03-03-2017

Criminal Miscellaneous No.307 of 2016 wherein Bimal Kumari, Manoj Kumar Pandey are the petitioners while in Criminal Miscellaneous No. 4135 of 2016 Manoj Kumar @ Manoj Kumar Sinha is the petitioner, commonly originate against an order dated 10.10.2015 passed by Devesh Kumar, Judicial Magistrate, 1st Class, Samastipur in Complaint Case No.1117 of 2015 / Trial No.2260 of 2015 whereby and whereunder they have been summoned to face trial for an offence punishable under Section 500 of the IPC on account of thereof, have been heard together and are being disposed of by a common order.

2. (a) Opposite party no.2/Complainant filed complaint petition (Annexure-1) putting an allegation that after passing B.A.,L.L.B he happens to be associated with Tathastu, Social Legal Organization and further, he has been made Secretary of the same. It has also been incorporated that complainant's family happens to be well respected and his mother once upon a time was Surpanch of Ladaura Panchayat and further, for the present she happens to be President of Kalayanpur Prakhanda Janta Dal (United) as well as one of the member of "Vishwasutri Programme".

(b) Then it has been averred that some members of Kalyan Nari Shakti Mahila Vikash Swablambi Sahkari Samittee Ltd. made written complaint that they are not being paid salary at proper time and further, excessive work are being taken from them. Furthermore, Swablamban Sahayata Samuh which happens to be associated with aforesaid co-operative society also filed written complain that no receipt was granted against receiving of the money from them, as well as there were no



proper utilization of the money received from Mahila Vikash Nigam. At the other end the fund are being misused after preparing forged and fabricated document.

(c) Because of the fact that the aim at Tathastu is to provide free legal aid to the poor on account thereof, after getting complaint, he filed petition under Right to Information Act before Kalyan Nari Shakti Mahila Vikash Swablambi Sahkari Samittee Ltd., Kalayanpur as well as Mahila Vikash Nigam, Patna. Proper reply was given by Mahila Vikash Nigam, Patna, however, belated reply was furnished by the Sahkari Samiti of which Bimal Kumari and Manoj Kumar Pandey are associated with. Because of the fact that financial irregularity was committed by Bimal Kumari and Manoj Kumar Pandey in conspiracy with Manoj Kumar on account thereof, Manoj Kumar Pandey come in the month of December, 2014 at his place and threatened that in case of non-withdrawal of the petition under Right to Information Act, he will have to face dire consequence. It has also been asserted that Manoj Kumar also threatened over mobile.

(d) Furthermore, it has been asserted that when complainant did not oblige them, then in the aforesaid background Bimal Kumari prepared a report at the instance of Manoj Kumar Pandey as well as Manoj Kumar dated 27.01.2015 wherein they have alleged that the complainant and his father used to demand donation/subscription on the pretext of Tathastu and for that they are misusing the Right to Information Act. This news was published in daily newspaper "Prabhat Khabar" on 02.06.2015 whereupon the complainant as well as family has been defamed.

(e) It has further been incorporated that the copy of the written representation dated 27.01.2015 made by Bimal Kumari was sent to him on 27.05.2015 and the same was received on 04.06.2015. It has further been asserted that accused persons have misappropriated the amount



disbursed by Mahila Vikash Nigam and only to protect themselves, levelled false allegation so that complainant be forbidden to exposed the financial irregularity. Furthermore, Superintendent of Police, Samastipur has also been informed with regard to threatening having at the end of the accused persons.

3. The aforesaid complaint petition was transferred to the learned Magistrate for holding an inquiry under Section 202 of the Cr. P.C. and during course thereof, apart from recording S.A. of the complainant, witnesses were also examined and lastly, by the order impugned petitioners/accused have been summoned to face trial in a manner as indicated above.

4. Heard learned counsel for the petitioners, learned Additional Public Prosecutor as well as learned counsel for the opposite party no.2.

5. The complainant /Opposite party no.2 had asserted in the complaint petition that written representation made by Bimal Kumari dated 27.01.2015 was communicated to him by the District Programme Officer, Samastipur which was received by him on 04.06.2015. On S.A. he had changed the version and stated that he represented before the District Magistrate based upon an information received from accused Bimal Kumari which was inquired by District Programme Officer Manoj Kumar as entrusted by the District Magistrate and was received by him on 04.06.2015 in spite of same being dated 22.01.2015 wherein an allegation has been levelled against him that he demands money and in case of non-payment, he harass through R.T.I. which he got on R.T.I. Then thereafter the news was published in "Prabhat Khabar" on 02.06.2015 wherein allegation has been attributed against him as well as his father and on account thereof, their prestige has been defamed. So on account of publication of news item he shown his grievances and in the aforesaid background Publisher, Printer as well as reporter were the person to be prosecuted with, as in S.A. the opposite party no.2 had kept



mum over activities of the petitioners apart from the fact that complainant/opposite party no.2 failed to disclose that source of information was from the petitioners.

6. Apart from this, the assertion whatever been incorporated in the complaint petition is not at all found substantiated by the complainant/opposite party no.2 during course of his S.A. as, he had stated that he had made allegation before the District Magistrate for proper investigation whereupon the matter was entrusted to District Programme Officer who submitted his report. Therefore, District Programme Officer, accused no.3/ petitioner had discharged his function in official capacity and in case, complainant was aggrieved with the report, would have moved before the District Magistrate to reject the same. Apart from this, it has not been stated by the complainant/opposite party no.2 that the copy of the report was ever leaked at the end of Manoj Kumar in order to defame his prestige. Apart from this, he had submitted his report in official capacity. In likewise manner the S.A. is silent with regard to activity of Bimal Kumari as well as Manoj Kumar Pandey. The other witnesses also did not identify the petitioners rather based his opinion on the news item published in the newspaper.

7. In ***Subrata Roy Sahara v. Union of India & Ors.*** reported in ***(2014) 8 SCC 470***, it has been held:

“191. The Indian judicial system is grossly afflicted with frivolous litigation. Ways and means need to be evolved to deter litigants from their compulsive obsession towards senseless and ill-considered claims. One needs to keep in mind that in the process of litigation, there is an innocent sufferer on the other side of every irresponsible and senseless claim. He suffers long-drawn anxious periods of nervousness and restlessness, whilst the litigation is pending without any fault on his part. He pays for the litigation from out of his savings (or out of his borrowings) worrying that the other side may trick him into defeat for no fault of his. He spends invaluable time briefing counsel and preparing them for his claim. Time which he should have spent at work, or with his family, is lost, for no fault of his. Should a litigant not be compensated for what he has lost



for no fault? The suggestion to the legislature is that a litigant who has succeeded must be compensated by the one who has lost. The suggestion to the legislature is to formulate a mechanism that anyone who initiates and continues a litigation senselessly pays for the same. It is suggested that the legislature should consider the introduction of a “Code of Compulsory Costs”.

8. While considering the plea of the complainant at the present stage, it is pertinent to see a prima facie case simultaneously it should also be seen that unscrupulous litigant should not be patronized to abuse judicial process to satisfy their personal vengeance.

9. That being so, instant prosecution suffers from grave infirmities whereupon the order impugned would not survive. Consequent thereupon, same is set aside. Both the petitions are allowed.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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