

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.6803 of 2012

Arising Out of PS.Case No. -0 Year- null Thana -null District- MUNGER

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Kuldip Narayan, I.A.S. S/O Shri Uma Kant Mishra Presently Posted As District-Magistrate, Munger, Police Station- Kotwali, District- Munger

.... Petitioner/s

Versus

1. The State Of Bihar
2. Amar Sinha S/O Late Kameshwar Prasad Sinha Resident Of Fort Area, P.S.- Kotwali, District- Munger.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Hargovind Singh Himkar, Advocate

For the Opposite Party/s : Mr. D.K.Sinha, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 03-05-2017

The petitioner has challenged the impugned order dated 10.01.2012 passed by the Sub-Divisional Judicial Magistrate, Sadar, Munger, in Complaint Case No.814 (C) of 2011 whereby took cognizance of offence under Section 501 of the Indian Penal Code.

2. A brief fact of the complaint, as narrated by the complainant, O.P.No.2 in the instant petition, is that the complainant a practising advocate along with his junior was appearing in Confiscation Case No.17 of 2003-2004 before the District Magistrate-cum-Appellate Authority, Munger, the present petitioner, but the Presiding Officer became aggressive and enquired whether he was advocate on record or not. The complainant retorted that Vakalatnama



was filed by his junior counsel. Hearing the reply District Magistrate became enraged and asked the complainant to get out of the court room so insulted him. In the matter the complainant was examined by the court on solemn affirmation, conducted enquiry and passed the impugned order.

3. Learned counsel for the petitioner submits that it is a malicious prosecution. The complaint was filed by the complainant on 05.09.2011 related to the alleged occurrence dated 25.07.2011, without assigning any cogent reason of inordinate delay in filing the complaint petition. Moreover, no ingredients of Section 501 of the I.P.C. in backdrop of the alleged facts of the complaint is made out. It is also submitted that the petitioner had no reason for nurturing malice against the complainant. The complainant was directed to deposit a sum of Rs.2,10,53,014/- as rental charge by the Khas Mahal Officer as he was illegally occupying Khas Mahal land as contained in Annexures-10 and 12 of this petition.

4. Being aggrieved by the said order the complainant filed the present complaint case out of malice.

5. Learned counsel for the petitioner also submits that the District Magistrate as an appellate authority was discharging his function as a Judge, so, no Court shall entertain or continue any civil or criminal proceeding against any person who is or was a Judge



for any act, thing or word committed, done or spoken by him when, or in the course of, acting or purporting to act in the discharge of his official or judicial duty or function, (THE) JUDGES (PROTECTION) Act, 1985 gives such protection.

6. The learned A.P.P. submits that there is no illegality in the impugned order.

7. Having considered the submissions of both sides and on perusal of the record it appears that the Complaint Case No.814 (C) of 2011 was filed by the complainant- opposite party on 05.09.2011 relating to the alleged occurrence dated 25.07.2011, that too without giving any plausible explanation or cogent reason for filing complaint so belatedly. In order to appreciate whether a prima facie case under Section 501 of I.P.C. is made out in the present context or not, let us analyse whether ingredients of offence under Section 501 I.P.C. is made out or not. Section 501 reads as such:-

Section 501—Printing or engraving matter known to be defamatory – Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.”

8. This section specifically relates to printing or



engraving any matter by a person which is defamatory to any person only then such an offence is made out otherwise not. In the present case the spoken word as alleged “ get out from my court” is neither a printed word nor engraved on any substance, so, no prima facie case under section 501 I.P.C. is made out in the back drop of the facts alleged in the complaint petition.

Moreover, the petitioner had earlier passed an order against O.P. No.2 (complainant) for making payment of penal charges, so the present complaint appears to have filed to wreck vengeance against the petitioner. So the aforesaid reason continuance of criminal proceeding against the petitioner will be sheer abuse of the process of the court, accordingly, the criminal proceeding in the matter inclusive order taking cognizance dated 10.01.2012 is set aside.

9. In the result, this petition is allowed.

(Arun Kumar, J)

AnilKrSinha/-

A.N.F.R.

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