

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.5942 of 2012

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Shambhu Yadav S/O Sri Uchit Yadav Resident Of Village- Tulsi Tola, Via-
Lakhminia, P.S.- Balia, District- Begusarai (Sub- Inspector of Police and then Sho
of Katra Police Station at Muzaffarpur, Bihar)

.... Petitioner

Versus

1. The State of Bihar
2. Arun Mishra, son of Vishnu Mishra, resident of village-Dhanaur, P.S.Katra,
District-Muzaffarpur.

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Md. Kamran, Advocate.

For the Opposite Parties : Mr. Dr. Mayanand Jha, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 08-09-2017

This application under Section 482 of the Cr.P.C. has been
filed to quash the order dated 04.05.2011 passed by Judicial
Magistrate, Ist Class, Muzaffarpur in Complaint Case No.1648 of
2010 (Trial No.3762 of 2011) whereby and whereunder the learned
Magistrate finding prima-facie case for the offence under Sections
379, 166, 323 and 504 of the IPC ordered for issuance of summons
against the petitioner.

2. Heard and perused the record.

3. The complaint filed a complaint case no.1648 of 2010 on
the file of CJM, Muzaffarpur alleging inter-alia that this petitioner
along with other co-accused and 15 to 20 unknown police constables
came at his house for executing process under Section 82 and 83. In



the process of execution of attachment they seized all the house hold articles of the Opposite Party No.2 as per seizure list. The complainant was residing at Pune and on getting information, he visited at the police station where this petitioner demanded an amount of Rs.50,000/- for the release of his articles and on the protest of complainant, this petitioner abused and assaulted the complainant.

4. The learned counsel for the petitioner submits that the petitioner is Police Sub Inspector and on the date of alleged occurrence he was posted as SHO at Katra police station. The other co-accused named in the complaint petition was posted as SHO of Nanpur police station Sitamarhi. The complainant has filed this complaint case with false and frivolous allegation. The fact is that on the date of alleged occurrence, the SHO of Nanpur P.S. had visited at his police station with the order of SDJM, Pupri wherein the property of Mithu Mishra alias Mukund Mishra was attached in connection with Nanpur P.S.Case No.88 of 2009 registered for an offence under Section 396 of the IPC. The petitioner and the SHO in order to execute the order of SDJM, Pupri had visited at the residence of absconding accused Mukund Mishra and attached his moveable articles as per seizure list in presence of local witnesses who had also put their signature on the seizure list. This petitioner is full brother of said accused who was then absconding in Nanpur P.S.Case No.88 of



2009. The petitioner had visited at the residence of said accused with the SHO of Nanpur P.S. only for executing the order of SDJM, Pupri. The act of the petitioner was in the discharge of official duty and he has protection under Section 197 of the Cr.P.C. The petitioner cannot be prosecuted unless sanction for his prosecution is taken from proper authority. It has been further submitted that the court below has taken cognizance only against this petitioner and left the other SHO of Nanpur P.S. who had also visited for and attached the property. The learned Magistrate has passed the impugned order without applying judicial mind and so the impugned order is fit to be quashed.

5. The learned APP concedes to the submission made on behalf of learned counsel for the petitioner to this effect that the petitioner was SHO of Katra P.S. and he had visited at the place of occurrence to assist the another SHO who was directed to attach the property of one Mukund Mishra.

6. On perusal of complaint petition and documents on record, I find that the Opposite Party No.2 is full brother of Mukund Mishra @ Mithu Mishra, an accused of Nanpur P.S. Case No.88 of 2009 registered for the offence under section 396 of the IPC. The complainant was residing at Pune and after getting information about attachment of property, he came at his village home and thereafter filed the complaint case. The Opposite Party No.2 claims that the



moveable property which were attached by the petitioner and other police officials belonged to him. It is not in dispute that he is brother of Mithu Mishra and he was residing in the house from where the articles were seized under attachment order. The complainant without obtaining any release order from the concern court had visited at police station. The SHO has rightly refused to release the articles in favour of the Opposite Party No.2. The petitioner had attached the property in discharge of his official duty and so sanction under Section 197 Cr.P.C. was necessary for his prosecution. The prosecution of this petitioner in the above facts and circumstances amounts to abuse of the process of the law.

7. In view of above facts, the impugned order dated 04.05.2011 passed by Judicial Magistrate, Ist Class, Muzaffarpur in Complaint Case No.1648 of 2010 and criminal prosecution of this petitioner is hereby quashed and this criminal miscellaneous application is allowed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	12.09.2017
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