

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.52806 of 2013

Arising Out of PS.Case No. -195 Year- 2009 Thana -SARAN COMPLAINT CASE District-
SARAN

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Anil Kumar Gupta, son of Late Raghunath Gupta, resident of Village/Mohalla
Mouna, P.S. Chapra Town, Distt- Saran at Chapra

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner/s: Ms. Rajani Kumari with Mr.Vijay Kumar, Advocates

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT
Date: 23-01-2017

Petitioner has preferred this application under Section 482 of the Code of Criminal Procedure for quashing the order dated 2.8.2011, passed by Sri A.K.Srivastava, learned Judicial Magistrate, Saran at Chapra, in connection with Complaint Case No.195 of 2009 vide Trial No.2067 of 2013, whereby and whereunder the learned court below has taken cognizance of the offence under Sections 211 and 466 of the Indian Penal Code against the petitioner.

The prosecution case, as per the complaint petition, in short, is that one Rajesh Gupta has lodged a written complaint before the Chief Judicial Magistrate, Chapra stating therein, inter alia, that Rakesh Gupta has assaulted him in the premises of Shilpi cinema hall with licensee revolver and thereafter when Rakesh Gupta had gone



out the petitioner committed forgery in the judicial record and changed the name of Rakesh Gupta as Rajesh Gupta, the present complainant, and due to which he has to face harassment in that case.

On the basis of the aforesaid complaint, Complaint Case No. 195 of 2009 was registered against the petitioner and the learned Magistrate after enquiry under Section 202 of the Code of Criminal Procedure has find a prima facie case against the petitioner under Sections 211 and 466 of the Indian Penal Code and, accordingly, has issued processes against the petitioner under Section 204 of the Code of Criminal Procedure.

Petitioner has challenged the aforesaid order issuing processes against him.

It has been submitted on behalf of the petitioner that, as a matter of fact, a case was lodged against the complainant Rajesh Gupta, who is the owner of the cinema hall, but by mistake it was typed as Rakesh Gupta and as such the correction has been made by the court itself. It has also been submitted that so far as the allegation of making forgery in the judicial record is concerned, it is not in the custody of the petitioner rather it is kept in custody of the court and it is the court concerned, who had to lodge the complaint, as such, the aforesaid allegation cannot be leveled against him. However, Sri A.K.Srivastava, learned Judicial Magistrate has taken cognizance



against the petitioner in a very mechanical way without appreciating the aforesaid fact.

Heard learned APP also.

Learned APP has submitted that on the basis of the materials available during the course of enquiry the learned Magistrate was ordered for issuance of processes against the petitioner and, as such, there is nothing illegal in the same. Hence, this application does not require any interference by this Court.

Heard both the sides and perused the record. In this case allegation is that petitioner by cutting in the judicial record of Complaint Case No. 377 of 2003 changed the name from Rakesh Gupta to Rajesh Gupta and due to that petitioner has to suffer and face the trial. Complaint petition further shows that even during the examination before the court he could not explain the same and told that his Advocate will explain the same. Thereafter again stated that by order of the court the same was modified. As such there is allegation of manipulation of record of Complaint Case No. 377 of 2003. After enquiry learned Magistrate finding their cases under Section 211 as well as under Section 466 IPC it issued an order issuing processes. No doubt, as per Section 211 IPC is concerned, as per Section 195 Cr.P.C. cognizance can be taken only at the instance of the court or by such Officer of the court as that court may authorize



in writing in its behalf or of some other court to which the court is subordinate, as such, learned Magistrate ought to have considered this aspect of the matter but apart from that processes were issued under Section 466 IPC and offence under Section 466 IPC is made out on the basis of the allegation as alleged above. So far the other contention of learned counsel for the petitioner is concerned, that cannot be looked into at this stage, as such, I am not inclined to interfere with the impugned order.

Accordingly, this application is dismissed.

(Vinod Kumar Sinha, J)

spal/-

AFR/NAFR	
CAV DATE	
Uploading Date	27.01.2017
Transmission Date	27.01.2017

