

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.7716 of 2012

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

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Yogendra Malakar, S/O Late Darogi Malakar, R/O Vill-Rasatak, P.S.Morkahi,
Distt-Khagaria

.... Petitioner/s

Versus

1. The State Of Bihar
2. Narayan Malakar S/O Late Santoshi Malakar R/O Vill-Jamalpur, P.S.Gogre,
Distt-Khagaria

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 26-04-2017

Heard learned counsel for the petitioner and the State.

2. This petition is filed for quashing order dated 13.05.2011 passed by Sri R.Kumar, Judicial Magistrate, 1st Class, Katihar in Complaint Case No. 1989 of 2010, whereby he has taken cognizance of offence under Sections 193 and 465 of the Indian Penal Code and directed to issue summons against the petitioner to face trial in the case.

3. A brief fact giving rise to the case is that Narayan Malakar, O.P. No. 2/complainant of the case, filed a complaint case No. 1989 of 2010 before the learned Chief Judicial Magistrate, Katihar alleging therein that the petitioner Yogendra Malakar had filed a complaint Case No. CA-1265 of 2000 on 12.07.2000 against



Narayan Malakar (O.P. No. 2 of this case), Manish Malakar and Dilip Malakar for alleged killing of his daughter Sunita Devi, for which they have been facing trial in S.T. No. 533 of 1998, which is pending in the court below. It is further alleged that in order to compromise the said case, O.P. No. 2 tried to kidnap his grand daughter Nikki Kumari, and on the basis of the complaint of the present petitioner, aforesaid complaint case was registered under Sections 364 and 511 of the Indian Penal Code, for which O.P. No. 2 along with others faced trial in S.T. No. 562 of 2007. It is alleged that the petitioner gave false and fabricated statement in a judicial proceeding and due to such litigation the present complainant/O.P. No. 2 sustained loss of more than Rs. Five lacs. Subsequently, at the enquiry stage, four witnesses were examined on behalf of the complainant thereafter the impugned order has been passed.

4. Learned counsel for the petitioner submits that in S.T. No. 562 of 2007 (arising out of complaint Case No. CA-1265 of 2000), the O.P. No. 2 along with others were put on trial, however they were acquitted by the court giving benefit of doubt so it was not a malicious prosecution. He further submits that averment made in the complaint case does not make out a case of forgery against the petitioner, as per the definition of Section 464 of the Indian Penal Code no any forged document was created by the petitioner. He



further submits that Section 193 of the Indian Penal Code deals with punishment for giving false evidence in a judicial proceeding, moreover, a complaint filed by a private person is not entertained as per law in view of Section 195 of Cr.P.C., so cognizance can be taken only on a complaint filed in writing by the court concerned. Therefore, the impugned order is liable to be set aside.

5. Learned A.P.P. supports the impugned order and submits that no illegality exists in the said order. However, no one appears on behalf of the O.P. No. 2.

6. Having considered the rival submissions of both sides and the materials available on record, it appears that allegation made in the complaint, bearing Complaint Case No. 1989 of 2010 filed by Narayan Malakar (OP No. 2) is that Yogendra Malakar (petitioner) had filed a false Complaint Case No. CA-1265 of 2000 levelling false allegation against him and in the trial false evidence was given in order to secure conviction of the complainant. However, I find that in S.T. No. 562 of 2007, arising out of Complaint Case No. CA-1265 of 2000, the O.P. No. 2 along with other accused were put on trial and by judgment and order dated 29.04.2010 acquitted of the charge under Sections 364 and 511 of the Indian Penal Code by giving benefit of doubt. In the said judgment, nowhere it is held that any false evidence was given or any document was fabricated. Moreover, according to



Section 195 of the Cr.P.C., cognizance shall not be taken under Section 193 of the Indian Penal Code besides other sections of Indian Penal Code mentioned therein unless a complaint in writing is filed by the court concerned, or by such officer of the court as that court may authorize in writing in this behalf or of some other court to which that court is subordinate. Moreover, the contents of allegation, as levelled in the present complaint, do not make out any *prima facie* case of forgery or producing a forged document in the court in Sessions Trial No. 562 of 2007.

7. Therefore, for the aforesaid reasons, the quashing petition is allowed and the cognizance taking order dated 13.05.2011 passed in Complaint Case No. 1989 of 2010 as well as subsequent criminal proceeding in this case against the petitioner is set aside.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
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