

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.5037 of 2012

Arising Out of Complaint Case No. 807 year 2004 District- VAISHALI(HAJIPUR)

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1. Krishna Kumar S/O Late Mosafir Prasad Sinha R/O Vill Lachhan Bigha, P.S. Ghoshi, Distt-Jahanabad, at the time Of Institution Of Case Posted As Officer In Charge, Rajapakar P.S., Distt-Vaishali At Hajipur

.... Petitioner/s

Versus

1. The State Of Bihar
2. Smt. Usha Devi W/O Deenanath Singh, of Vill Akhtiyarpur Patedha, P.S.Sarai, Distt-Vaishali

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. M.P. Bhartee

For the Opposite Party No. 2 : Mr. Manish Chandra Gandhi

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 05-09-2017

This application under Section 482 of the Code of Criminal Procedure has been filed to quash the order dated 26.07.2011 passed by the learned Judicial Magistrate, 1st Class, Vaishali at Hajipur in Complaint Case No. 807 of 2004 (Trial No. 1082 of 2011) whereby and whereunder the learned Magistrate took cognizance for the offence under Sections 341, 323 and 427 of the Indian Penal Code and summoned the petitioner.

2. Heard both sides.

3. The Opposite Party No. 2 filed a complaint case on the file of C.J.M, Vaishali alleging inter alia that in the night of 8th / 9th April of 2004, this petitioner along with police forces entered into



her house. They abused and assaulted the complainant and her family members and snatched gold chain. They arrested and remanded the male members of her family.

4. The learned counsel for the petitioner submits that the petitioner is Police Officer and on the date of alleged occurrence, he was posted as Officer-in-charge of Rajapakar Police Station, District-Vaishali at Hajipur. On the date of occurrence, as per the direction of higher authority, he along with police forces had visited at the place of the complainant to arrest her son Braj Kishore Singh @ Gugul, who was an absconding accused in Sarai P.S. Case No. 92 of 1993 registered for the offence under Sections 341, 323, 337, 427 and 379/34 of the Indian Penal Code. The Chief Judicial Magistrate, as per the order dated 03.01.1994, finding no chance of appearance of son of the complainant had issued non bailable warrant of arrest. The Superintendent of Police had deputed special raiding party with two platoon forces and the petitioner in order to discharge his official duty had visited at the place of the complainant. The complainant and her family members resisted and used criminal forces against the petitioner and police forces. They attempted to snatch the revolver of the petitioner and snatched gold chain from his neck. This petitioner lodged a police case vide Sarai P.S. Case No. 37 of 2004 on the same day i.e. on 09.04.2004. The case was investigated and police



submitted charge-sheet against the complainant and her family members on 14.10.2004. The complainant in order to save herself and her family members has filed the complaint case with false and frivolous allegation after delay of three days. It was also submitted that the petitioner is Police Officer and he in course of discharge of his official duty had visited at the place of the complainant to arrest her absconding son and so, his prosecution without sanction under Section 197 of the Cr.P.C. is not sustainable. The learned Magistrate has passed the impugned order without applying judicial mind and so, the impugned order deserves to be quashed.

5. The learned counsel for the Opposite Party No. 2 as well as the learned APP for the State opposed the submissions. It was submitted that the arrest of the son of the Opposite Party No. 2, no female constable was deputed and so, the petitioner acted beyond his jurisdiction by entering into the house of the Opposite Party No. 2 in the night. The court below has rightly taken cognizance and so, no interference is required in the impugned order.

6. On perusal of complaint petition and the annexures available on record, I find that the son of the Opposite Party No. 2 was wanted in a criminal case registered in the year 1993. The petitioner along with police forces duly deputed on the requisition of the Superintendent of Police had visited at the place of the



complainant where the complainant and her family members used criminal forces and allegedly, attempted to snatch revolver and assaulted the police forces for which a police case was registered on the self statement of the petitioner on the same day. The present complaint case has been filed after three days of the institution of F.I.R. by this petitioner. Besides that, no sanction under Section 197 of the Cr.P.C. has been obtained for prosecuting the petitioner. In absence of sanction, the criminal prosecution of this petitioner appears to be bad. The present complaint case, which has been filed after institution of criminal case by the petitioner, appears to be malicious and it amounts to abuse of process of Court.

7. In the facts and circumstances stated above, the order dated 26.07.2011 taking cognizance against the petitioner is hereby quashed and this application is allowed.

(Sanjay Kumar, J)

ajay gupta/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.09.2017
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