

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.47058 of 2013

Arising Out of PS. Case No.-294 Year-2012 Thana- PATNA COMPLAINT CASE District-
Patna

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SHAILESH KUMAR @ SHAILESH KUMAR SRIVASTAVA SON OF
LATE BIMAL SHANKAR PRASAD REVENUE KARAMCHARI-CUM-
OFFICIATING CIRCLE INSPECTOR, SAMPATCHAK BLOCK,
RESIDENT OF VILLAGE- GOVINDPUR P.S.- FATUHA, DISTRICT-
PATNA.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Jitendra Singh Son Of Late Raj Kishore Singh Resident Of Village-
Chippura Khurda, P.S.- Gaurichak, District- Patna, At Present Village-
Sipara West (Mother Teresa School), P.S.- Beur, District- Patna

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Rajesh Kumar, Adv
For the State	:	Mr. JITENDRA KR. SINGH 1 (APP)
For the Opposite Party/s :		Mr. V. Anand, Adv

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 02-08-2017

Heard learned counsel for the parties.

The present application under Section 482 of
the Cr.P.C has been filed for quashing the order dated
24.06.2013 passed by learned Judicial Magistrate, 1st Class,
Patna in Complaint Case No. 294(C) of 2012 taking cognizance
against the petitioner under Section 408 read with Section 120B
of the Indian Penal Code.



Briefly stated, the facts of the case is that one Jitendra Singh filed a petition before the Circle Officer, Sampatchak block to the effect that the registered deed in the name of Savitri Devi w/o Satyendra Singh of village-Chhipura, P.S. Gaurichak, District Patna and registered deed in the name of Sugriv Prasad s/o Ramdewan Singh village Dashratha, P.S. Beur, District Patna have been cancelled. A photocopy of cancel deed along with the petition was filed before the Circle Officer, for not mutating the names of those persons whose deeds have already been cancelled.

In spite of information and petition given by the complainant, the office of Circle officer, Sampatchak and its karamchari as mentioned in the complaint petition at serial nos, 1, 2, 3 and 4, mutation was done as well as rent was fixed. It is further stated that all the four accused concealed the facts from the officer and this illegal act was done.

It has been further alleged that an application for certified copy was filed by the complainant son before the accused Awadhesh Singh but he refused to give the certified copy. It has been further alleged that in spite of petition filed on 09.08.2010, the accused persons committed the offence and issued receipt illegally. Thereafter the complainant's son Anil



Singh filed a petition under Right to Information Act on 22.09.2011 and from the information received, it was revealed that accused persons have committed the abovementioned offence. It has been further stated by the petitioner that Gopalpur P.S. case No. 75 of 2011 was instituted by Alok Divya, Circle Officer, Sampatchak on 30.07.2011 against Raj Kishore Gupta, Rajswa Karamchari and his assistant Awadhesh Singh for the same offence.

In the FIR lodged by the Circle Officer, it has been stated by the informant-Circle Officer, regarding cancellation of two deeds and thereafter mutation in the name of persons, whose deeds were cancelled and in that FIR, Raj Kishore Gupta and his assistant Awadhesh Singh have been named as accused. It has been further stated by the petitioner that in the said FIR which has been lodged by the Circle Officer, Sampatchak, not a word has been said about the involvement of the petitioner for the said offence. It has been further submitted that after investigation, the police has submitted the chargesheet against Raj Kishore Gupta and Awadhesh Singh under Section 408 of the Indian Penal Code. It has been further stated by the petitioner that the petitioner is not employee of the complainant and as such no cognizance can be taken against him under



Section 408 of the Indian Penal Code. The offence under Section 408 of the Indian Penal Code relates to criminal breach of trust by a clerk or servant and petitioner is neither clerk nor servant of the complainant, as such no offence under Section 408 of the Indian Penal Code is made out against the petitioner. It has been further stated that the controlling authority who is the Circle Officer, Sampatchak has already lodged an FIR against the real accused persons and after investigation the police has submitted chargesheet against them and during investigation police has not find any involvement of the petitioner and as such no offence is made out against the petitioner. Lastly, it has been submitted that the petitioner is a Government employee and offence as alleged has been committed during discharge of his official duty. The counsel for the opposite party has submitted that cognizance of offence is taken and not of section. It has been further submitted that any defence to be taken by the petitioner can be raised during course of trial and cannot be raised at the initial stage of prosecution. The magistrate has taken cognizance of the offence and power of the High Court to interfere is only to a limited extent. The High Court cannot substitute its view for summoning order passed by the Magistrate. While exercising inherent jurisdiction,



it is not for the High Court to appreciate the evidence or its truthfulness or its sufficiency, as it is the function of the trial court.

It has further been submitted that at the stage of taking cognizance, court's duty is limited to the extent of finding out whether from the material placed before it, offence as alleged against accused is made out or not with a view to proceed further. The general rule, at present time, is that any one may commence proceeding and prosecute in the Magistrate's court. The inherent power to quash the proceeding can be exercised only in a case where the material placed before the court does not disclose any offence or the allegations are frivolous and vexatious.

Power of quashing is to be exercised sparingly and with caution. Such a power is required to be exercised in a case where complaint does not disclose any offence. At this stage there cannot be meticulous analysis of the case.

After hearing both the parties and their rival contentions and from examining the complaint petition and materials placed on record, it cannot be said at this stage that no offence is made out. The allegations made also cannot be said to be part of official duty.



For the reasons as stated above the application under Section 482 of the Cr.P.C is dismissed at this stage, however, it shall be open to the petitioner to raise and take all grounds as raised here at the time of framing of charge/discharge petition.

Petition is dismissed.

(S. Kumar, J)

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CAV DATE	
Uploading Date	
Transmission Date	

