

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.23995 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- EASTCHAMPARAN(MOTIHARI)

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1. Shashi Kumari, W/O Dr. Shambhu Nath, Resident of Mohalla- Shivaji Nagar, P.S.- Masaurhi, District- Patna At Present Working As Child Development Project Officer, Turkaulia Block, P.S.- Turkaulia, District- East Champaran
 2. Ramashish Ram, S/O Late Shiv Ram, Resident of Village- Ramdihwa, P.S.- Tilauthu, District- East Champaran At Present Working As Clerk In The Officer Of The Cdpo, Turkaulia Block
 3. Ajay Kumar Singh @ Ajay Kumar, S/O Ram Anup Singh, Resident of Village- Mathurapur, P.S.- Turkaulia, District- East Champaran

.... Petitioner/s

Versus

The State Of Bihar & Anr. (Details Not Given)

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Sandeep Kumar, Advocate. Mr. Ajit Kumar, Advocate.
For the Opposite Party No.2	:	Mr. Suresh Prasad, Advocate. Mr. Anurag Pandey, Advocate.
For the State	:	Ms. Rita Veram, APP

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

Date: 10-10-2017

Heard learned counsel for the petitioners, learned counsel for the opposite party no. 2 and the learned counsel for the State.

2. This application, under Section 482 of the Code of Criminal Procedure, is directed against the order dated 31.05.2011 passed in Complaint Case No. 519 of 2011, whereby the learned Chief Judicial Magistrate, Motihari, summoned the accused-petitioners, on inquiry, under Section 204 of Cr.P.C finding the prima facie case,



under Section 323, 341, 504 and 506/34 of the Indian Penal Code.

3. The facts leading to this application are that complainant-opposite party no. 2, Sharda Devi, filed the Complaint Case No. 519C of 2011 in the court of Chief Judicial Magistrate, Motihari, with contention that she is the Anganwari Sevika posted at Centre No. 109 since 1998 and one Rita Devi, who is assistant at the centre, did not use to come at the Anganwari Centre. In spite of that C.D.P.O. (petitioner no.1) used to give her salary retain 50% salary of Rita Devi with her. When she made quarry to C.D.P.O. (petitioner no. 1) as to why the salary is being paid to Rita Devi without discharging duty then C.D.P.O. (petitioner no. 1) stopped her salary for six months. While the school dress was to be distributed among 48 children of Harijan Tola, but school dress was provided to only 28 children by C.D.P.O. (petitioner no. 1). The money for mid day meal for the month of August and September, 2010 could not be received due to laches of C.D.P.O. (petitioner no. 1) and the rent of Rs.200/- per month of the house was not paid since six years.

On, inquiry under 202 Cr.P.C., S/A of the complainant-opposite party no. 2 and the statement of witnesses, namely, Kewal Devi, Suganti Devi and Chandrawati Devi, were recorded. Thereafter, learned Chief Judicial Magistrate, Motihari, summoned the accused-petitioners, under Section 204 of Cr.P.C. through the impugned order



finding the prima facie case, under Section 323, 341, 504 and 506/34 of the Indian Penal Code.

4. Learned counsel for the petitioners submits that it would appear from the complaint petition that only allegation has been made about committing illegality irregularity in discharging the official duty by Shashi Kumari (petitioner no.1), being the C.D.P.O. and petitioner no. 2 is the clerk in the office of C.D.P.O. (Petitioner no. 1) and petitioner no. 3 is the son of one of the Anganwari Shevika. Further submission is that admittedly petitioner no. 1 is the C.D.P.O. and she being Class II Officer, could not be removed from her service without prior sanction of the State Government as the impugned order summoning the accused-petitioners without prior permission of the State Government, as required under Section 197(3) of the Cr.P.C., is illegal. Learned counsel for the petitioners further submits that, in fact, opposite party no. 2, who was Anganwari Sevika at Centre No. 109 in Block Turkaulia, was negligent in discharging of official duty due to that reason accused-petitioner no. 1 being the C.D.P.O. of Turkaulia sent the letter to the District Progaram Officer, East Champaran, on 26.02.2011, for removal from her service due to that reason the complainant-opposite party no. 2 filed the Complaint Case No. 519C of 2011 only to give undue pressure, in which petitioners have been summoned under Section 204 Cr.P.C. through the



impugned order.

5. On the other hand, learned counsel appearing for the opposite party no. 2, fairly submits that while there is no allegation of assault and abuse in the complaint petition, but later on, the witnesses have stated that accused-petitioners abused and assaulted to the complainant-opposite party no.2.

6. On perusal of the complaint petitioner, it is apparent that only allegation has been made about committing irregularity and illegality in discharging of official duty by the accused-petitioner no. 1 being the C.D.P.O. and there is no whisper about abusing and assaulting to the complainant-opposite party no. 2 by the accused-petitioners. While the complainant-opposite party no. 2 has filed the counter affidavit but she has not denied about sending the letter dated 26.10.2011 by the accused-petitioner no. 1 to District Programme Officer, East Champaran at Motihari with prayer to remove the complainant-opposite party no.2 due to laches in discharging her duty as Anganwari Sevika prior to filing the present complaint petition.

7. As such, Complaint Case No. 519 of 2011 appears to be filed by the complainant-opposite party no. 2 with ulterior motive and continuance of further proceeding on summoning the accused-petitioners through the impugned order would amount to abuse of process of the court.



8. In the result, the order dated 31.05.2011 passed in Complaint Case No. 519 of 2011 summoning the accused-petitioners and entire criminal proceeding is hereby quashed and this application is allowed.

(Rajendra Kumar Mishra, J)

Bhardwaj/-

AFR/NAFR	
CAV DATE	
Uploading Date	13.10.2017
Transmission Date	13.10.2017

