

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.17281 of 2013

Arising Out of PS.Case No. -3138 Year- 2012 Thana -KATIHAR COMPLAINT CASE District-KATIHAR

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Sudhir Kumar, S/O Sri Narayan Prasad, R/O Vivekanand Nagar, Kaystha Tola, Near Railway Station, Police Station - Saharsa (Town), District - Saharsa, presently posted as Senior Deputy Collector, Madhepura

.... Petitioner/s

Versus

1. The State of Bihar
2. Md. Marghoob Alam, S/O Sr. Samsul Haque, R/O Village - Shikarpur, Police Station - Balia, District - Katihar At present Civil Court, Katihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bindhyachal Singh, Advocate.
Mr. Ram Binod Singh, Advocate.
For the State : Mr. Surendra Kumar, A.P.P
For the Opposite Party/s : Mr. Nazmul Hoda, Advocate.
Mr. Md. Qumrul Hoda, Advocate.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 02-11-2017

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the O.P. No. 2.

2. The petitioner, by invoking inherent jurisdiction of this Court, has filed an application under Section 482 of the Code of Criminal Procedure, seeking setting aside cognizance order dated 22.03.2013 passed by Mr. Deepak Kumar, Judicial Magistrate, Katihar in Complaint Case No. 3138 of 2012 thereby taking cognizance of offence under Sections 166, 323, 384 and 504 of the Indian Penal Code.

3. A brief fact, as narrated in the complaint, giving rise to



the case is that complainant, a practicing advocate in the Civil Court, Katihar, filed a complaint alleging therein that Revenue Appeal No. 04 of 2001-02 was remanded back by the Hon'ble High Court to Sub Divisional Officer, Barsoi, by order passed in CWJC No. 4530 of 2002, but the Sub Divisional Officer was not calling lower court record for disposal of the revenue appeal, as he was under the influence of the respondents of the case, so he filed a petition before the District Magistrate, Katihar in Janta Darbar in this regard but no action was taken. Thereafter, he preferred an appeal under Right to Information Act. In the meantime, accused also pressurized him to withdraw the case but he did not yield ultimately under the influence of the respondents, passed the order in their favour. He applied for getting certified copy of the impugned order and not being provided so, he filed petition under Right to Information Act to furnish the same, thereafter certified copy of the impugned order was provided but the same was incomplete. He went to the office of the Sub Divisional Officer on 09.11.2012 at 11:00 A.M., but he abused and threatened him and also pushed him out of his chamber. He also obtained his signature forcibly on blank sheet of paper, so all these acts of the Sub Divisional Office showed indulgence him in corruption. The complainant went to lodge a case to the police station but the same was not instituted, so he filed the complaint.



4. Learned counsel appearing on behalf of the petitioner submits that the petitioner was posted as Sub Divisional Officer, Barsoi at the relevant point of time and as per direction of the Hon'ble Court when Revenue Appeal No. 04 of 2001-02 remanded back, he passed order after hearing both sides, accordingly, he reopened the case and passed the order. As the order was passed against the complainant, so, being a lawyer, he maliciously filed this complaint case alleging that complete certified copy of the order was not supplied and went into his chamber to make enquire so, he was abused and pushed out from the chamber and his signature was forcibly obtained on blank sheet of paper. He further submits that with similar allegation, he filed a petition before the District Magistrate in Janta Darbar and enquiry was conducted by the Additional Collector, Katihar and submitted enquiry report (Annexure-6) finding all the allegations baseless and being aggrieved of the order passed against him, he filed such complaint. It is further submitted by learned counsel for the petitioner that petitioner was a public servant and protection is given to a public servant under Section 197 of Cr.P.C. against frivolous complaint filed by unscrupulous element. In this case, no sanction has been obtained from any authority and without sanction, a public servant cannot be prosecuted so cognizance cannot be taken against the petitioner. Learned counsel places reliance in the



case of *Rabindra Kumar Singh vs. State of Bihar & Anr.* reported in *2015(4) PLJR 27*. Learned counsel submits that decision is based on several judgments pronounced by the Hon'ble Apex court.

5. Contrary to such submission, learned counsel for the O.P. No. 2 submits that complainant was abused, pushed out of chamber by the petitioner and also obtained his signature forcibly on a blank sheet of paper and as far as sanction for the prosecution under Section 197 Cr. P.C. is concerned, there are decisions on both ways given by the Hon'ble Apex Court, sanction can be obtained even after taking cognizance but before commencement of the trial.

6. Having considered rival submissions and on perusal of record, the Court finds that allegation in complaint is that petitioner was posted as Sub Divisional Officer at the relevant point of time at Barsoi, according to the complainant, he was not disposing of the Revenue Appeal No. 4 of 2001-02 even after being remanded by the High Court. Second allegation is that said appeal was disposed of in favour of the respondents under their influence and when he filed application for obtaining certified copy of the order, same was not supplied, so he went into the chamber of the petitioner for making enquiry and then he abused and pushed out of the chamber. The Court finds that the complainant, as it is also mentioned in the complaint petition itself, also made similar allegation to the District Magistrate,



Katihar in Janta Darbar, who appointed Additional Collector to make enquiry with regard to the allegation. A detailed enquiry was made and the conclusion is that such allegation was without substance, not supported by any evidence and further observed that as the order of the Revenue Appeal No. 4 of 2001-02 was passed against the complainant's father, who was one of the parties, so in stead of approaching the superior courts, he levelled the false allegation. The Sub Divisional Officer, Barsoi, while discharging *quasi judicial function*, passed order in revenue appeal and it appears that when the order was passed against the complainant's father, maliciously this complaint was filed. Allegation appears to be absurd and improbable as why a responsible officer would abuse any person in the chamber without any reason as already the appeal pending before him was disposed of. Besides this, allegation is that petitioner being public servant abused the complainant in official chamber while he was discharging his official function. As per Section 197 Cr.P.C., sanction is required to be obtained before taking cognizance. Section 197 Cr.P.C. reads as under:

“197. Prosecution of Judges and public servants.-(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no



Court shall take cognizance of such offence except with the previous sanction save as otherwise provided in the Lokpal and Lokayautas Act, 2013-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with affairs of a State, of the State Government:

- (2) xx xx xx xx
- (3) xx xx xx xx
- (4) xx xx xx xx

In the present case, no such sanction for prosecuting the petitioner, a public servant, has been obtained.

7. Hence, for the aforesaid reasons, the impugned order is not sustainable. Hence, the entire criminal proceeding inclusive of the cognizance order dated 22.03.2013 passed by Mr. Deepak Kumar, Judicial Magistrate, Katihar in Complaint Case No. 3138 of 2012 is set aside. The application stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
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