

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.47623 of 2013

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Abdul Hannan, S/o Late Abdul Hai, Resident Of Mohalla Azimabad
Colony, P.S.- Sultanganj, District- Patna.

.... Petitioner

Versus

1. The State Of Bihar
2. Md. Mokim, son of Late Md. Abbas, resident of Oliplur Road, P.S.
Jamalpur, District Munger

.... Opposite Parties

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Appearance :

For the Petitioner	:	Mr. N.A. Shams, Advocate and
	:	Mr. S Esheshmuddin, Advocate
For the O.P. No.2	:	Mr. Awadhesh Kumar Mishra, Advocate and
	:	Mr. Kumar Priyadarshi, Advocate
For the Opposite Party	:	Mr. Umeshanand Pandit(App)

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL ORDER

3 04-05-2017 The instant Criminal Miscellaneous has been filed for quashing the order dated 05.08.2013 passed by the Judicial Magistrate 1st Class, Munger in Protest Complaint Case No. 1256(C) of 2012 whereby and whereunder, he has taken cognizance of the offence punishable under Section 363 of the Indian Penal Code against the petitioner.

Heard the learned counsel for the petitioner, the learned A.P.P. for the State and the learned counsel for the complainant.

The opposite party no.2 lodged a complaint on 29.11.2010 in the Court of Chief Judicial Magistrate making the petitioner as accused. The said complaint case was registered as Complaint Case No. 1282 (C) of 2010 which was sent for



registering F.I.R. and for investigating the same. Accordingly, Kotwali P.S. Case No. 113 of 2011 (G.R. No. 534 of 2011) was registered for the offence punishable under Section 364/34 of the Indian Penal Code.

The allegation as made out by the complainant is that in the evening of 05.09.2010 the petitioner along with four unknown persons kidnapped him. His wife lodged the complaint with the police. The police in course of investigation took the evidence of the witnesses and after visiting the place of occurrence came to the conclusion that false case has been lodged against the petitioner by the complainant/informant. Senior Police Officer also recommended for initiating proceeding under section 182 and 211 of the Indian Penal Code against the complainant Md. Mokim. Final form was accepted by the learned Magistrate but on protest complaint after examination of the complainant on solemn affirmation and after examination of two inquiry witnesses the impugned order has been passed.

On behalf of the petitioner, it is submitted that the petitioner joined the Central Bank of India as Agriculture Assistant w.e.f. 19.01.1978 and presently he is performing his duties as a Senior Manger, Central Bank of India, Fraser Road Branch, Patna. When the petitioner was posted as Manger,



Central Bank of India at Jamalpur, he sanctioned some conditional loan to Md. Mokim to run a biscuit factory and when the certain condition was not fulfilled by the complainant then payment of part of the loan was stopped. Being aggrieved by the action of the petitioner, complainant lodged a complaint in the court of Chief Judicial Magistrate, Munger making allegation of bribery for sanction of loan. The said complaint Case No. 895 (C) of 2010 was registered and after inquiry the said complaint case was dismissed against which Criminal Revision No. 11 of 2012 was filed which after hearing was also dismissed and then this complaint case has been filed. As a matter of fact, the petitioner was assaulted on 27.09.2010 by the complainant while he was performing his duty in the Bank premises at Jamalpur and for that the petitioner lodged case against the petitioner bearing Jamalpur P.S. Case No. 131 of 2010 wherein cognizance was taken for the offences punishable under Sections 420, 409, 447, 341, 323, 379, and 504/34 of the Indian Penal Code against the opposite party no.2 the complainant. The bail application of opposite party no.2 was rejected up to the learned Sessions Judge vide B.A. 25 of 2011 wherein it was found that opposite party no.2 misappropriated the government money which was given as loan. The instant protest complaint is nothing but a last attempt on part



of the complainant to falsely implicate the petitioner for the simple reason that he stopped the conditional loan to the complainant and saved the government money. The opposite party no.2 is a man of criminal antecedent, which was also mentioned in the order of learned Sessions Judge vide B.A. No. 25 of 2011. The learned Magistrate took cognizance without going through the materials available on record. When the Final form was accepted then on the same material, the cognizance taken is bad in law and is fit to be quashed.

The learned A.P.P. and the learned counsel for the complainant, on the other hand, submit that at the time of taking cognizance the learned Magistrate is only required to see as to whether on the basis of materials available on the record prima facie offence is made out or not. At this stage, meticulous scrutiny of the material cannot be done. The defence of the accused cannot be adjudged at this stage. The opposite party no.2 has already paid the entire dues amount of the bank.

Having considered the submissions urged at the Bar, going through the record it is manifest that with similar allegation the complaint case filed by the complainant which was registered as Kotwali P.S. Case No. 113 of 2011 was found false, during investigation and with the same allegation and on the basis of



statement of two inquiry witnesses taking cognizance appears misconceived in law and further the same is bad in law.

I perused the statement of the complainant on solemn affirmation and further the statement of two inquiry witnesses namely Vikash Kumar and Ashok Thathera. It is manifest that they have stated specifically that they do not identified the accused persons. Ashok Thathera has further stated that he is staff of Md. Mokim, but inspite of that relying on such material the learned Magistrate has passed the order taking cognizance which is bad in law and the continuation of the similar proceeding will be misuse of the process of the Court and also misuse of valuable time of the court, the Bank Officer in such cases should be protected.

In the result, this Criminal Miscellaneous is allowed and the order dated 05.08.2013 passed in Complaint Case No. 1256 (C) of 2012 as well as further proceeding of the complaint case are hereby quashed.

(Jitendra Mohan Sharma, J.)

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