

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.45878 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District- SITAMARHI

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Bans Bahadur Mahto son of Late Parikshan Mahto, resident of village -
Ramnagara, P.S. - Mejarganj, District - Sitamarhi, at present Panchayat Secretary
Gram Panchayat Raj Bariyarpur under Block Office, Dumra, District - Sitamarhi

.... Petitioner/s

Versus

1. The State of Bihar
2. Navin Paswan son of Rajendra Paswan, resident of village - Dumra, Nagar
Panchayat Ward No. 5, Police Station - Dumra,. District - Sitamarhi

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rajendra Narayan, Sr. Advocate
: Mr. Anil Kumar, Advocate
: Mr. Madanjeet Kumar, Advocate

For the Opposite Party No.2 : Mr. Nirmal Kumar Sinha, Advocate

For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 08-08-2017

Heard Mr. Rajendra Narayan, learned Senior Advocate for
the petitioner and Mr. Jharkhandi Upadhyay, learned Additional
Public Prosecutor for the State.

2. This application under Section 482 of the Code of
Criminal Procedure (for short 'the CrPC') has been filed for quashing
the order dated 22.05.2013 passed in Complaint Case No.C-1/340 of



2013 by the Sub Divisional Judicial Magistrate, Sadar, Sitamarhi by which the petitioner has been summoned under Section 204 of the CrPC to face trial for the offences punishable under Sections 384, 166, 504, 188, 341 and 323 of the Indian Penal Code and Section 3(i)(x) and Section 4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

3. The facts of the case, in short, are that the complainant-opposite party no.2 had applied for appointment on the post of Panchayat Teacher in the year 2008. He had obtained 50.88% marks in Intermediate examination. His claim was that though he appeared for counseling, no counseling was done by the appointment committee. Then he filed a case before the District Teachers Employment Appellate Tribunal, Sitamarhi (for short 'the Tribunal'), vide case no.139 of 2010, in which, the Panchayat Secretary was noticed. After hearing the Panchayat Secretary, an order was passed in favour of the complainant to hold counseling within two weeks, if the post of Scheduled Castes male candidate is vacant. It is alleged by the complainant that when he met the petitioner, he demanded rupees one lakh as illegal gratification for making his appointment. Thereafter, he made a complaint to the District Programme Officer, Sitamarhi, who wrote a letter dated 22.06.2012 to the Panchayat Secretary and



Mukhiya of the Gram Panchayat annexing the order of the Tribunal, dated 22.12.2011 passed in Case No.139 of 2010 with a direction to comply the order of the Tribunal. The complainant also approached to the District Panchayat Raj Officer, who also directed the Panchayat Secretary, vide memo no.631, dated 16.08.2012, to hold counseling of the complainant within a week, if the post for male teacher in Scheduled Castes category is vacant. The complainant has alleged that the Panchayat Secretary did not comply with the orders passed by the Tribunal, the District Programme Officer and the District Panchayat Raj Officer. The complainant once again approached the Panchayat Secretary on 12.03.2013 and requested him for his appointment, but the Panchayat Secretary became annoyed and assaulted with fists and slaps and also abused him calling his caste name.

4. On the basis of these allegations made in the complaint, a complaint case was registered and after recording the statement of the complainant on oath under Section 200 of the CrPC, the impugned order dated 22.05.2013 was passed under Section 204 of the CrPC summoning the petitioner to face trial for the offences mentioned hereinabove.

5. Assailing the aforesaid order dated 22.05.2013, Mr. Rajendra Narayan, learned Senior Advocate for the petitioner has



submitted that since the process for appointment on the post of Panchayat Teacher, as prescribed under Rule-9 of the Bihar Panchayat Teachers' Appointment Rule, 2006, itself was not completed, the order passed by the Tribunal was unworkable. He has submitted that the complainant had approached this Court in writ jurisdiction and sought for issuance of a direction to implement the order dated 22.12.2011 of the Tribunal. He has submitted that in the said writ petition, after hearing the parties, this Court not only refused to issue any direction for implementation of the order, but also held that the order passed by the Tribunal was bad both on fact and law. He has submitted that the Mukhiya of the Gram Panchayat Raj, Bariyarpur had also filed a writ petition before this Court, vide CWJC No.5542 of 2014, challenging the order passed by the Tribunal and this Court had allowed the writ petition holding that the Tribunal's order is not required to be implemented, vide order dated 26.02.2016. He has submitted that since no merit list for appointment was ever prepared, there was no question of holding counseling of the complainant and only because an erroneous order was passed by the Tribunal, the complainant was putting undue pressure upon the petitioner, who was then Panchayat Secretary of the Bariyarpur Gram Panchayat and the Mukhiya to appoint him and when the same not acceded to, a



concocted and fabricated complaint was filed with ulterior motive. He has submitted that though the complainant has alleged that he was abused and assaulted in public view, no witness of such incident was examined during enquiry and, from the order impugned, it would transpire that summoning order has been passed merely on the basis of perusal of the complaint and the statement of the complainant recorded on oath.

6. Mr. Nirmal Kumar, learned Advocate, has appeared on behalf of the complainant- opposite party no.2. His contention is that his client has taken away the file from him and he has no instruction to argue the case.

7. Mr.Jharkhandi Upadhyay, learned Additional Public Prosecutor appearing for the State has tried to defend the order passed by the learned Sub Divisional Judicial Magistrate, Sadar, Sitamarhi. He has submitted that defence of the accused on facts cannot be a ground for quashing the complaint. According to him, the allegations made in the complaint clearly attract ingredients of the offences under which cognizance has been taken. He has contended that the complainant has fully corroborated the allegations made in the complaint in his examination on oath.

8. I have heard learned counsel for the parties and perused



the record.

9. The main grievance of the complainant in the complaint seems to be non-implementation of the order dated 22.12.2011 passed by the Tribunal in Case No.139 of 2010. In this regard Mr. Rajendra Narayan, learned Senior Advocate for the petitioner has drawn my attention towards the order dated 08.01.2014 passed in CWJC No.25019 of 2013, as contained in Annexure-16, and the order dated 26.02.2016 passed in CWJC No.5542 of 2014, as contained in Annexure-17 to this application. On perusal of the order dated 08.01.2014, I find that this Court has not only dismissed the writ application filed by the complainant for implementation of the aforesaid order dated 22.12.2011 passed in Case No.139 of 2010 by the Tribunal, but also held that the order passed by the Tribunal itself was bad both on fact and in law. This Court, in its order dated 08.01.2014 observed:

“On perusal of the cryptic order passed by the Tribunal, it becomes very clear that the Tribunal even did not venture to look into the most crucial aspect as to whether there was a panel already prepared in which the petitioner at the stage of counseling was deprived of an opportunity of being selected and appointed. Counseling as per Rule-9 of



the 2006 Rules is the last stage and in fact the scheme of things as provided under Rule-9 would go to show that after receipt of the application and its screening, a draft merit list has to be prepared and objection thereto has to be also invited. Only after preparation of the final merit list after disposal of the objection to the draft merit list, the same has to be acted upon for making appointment on the basis of the respective position in the merit list vis-a-vis the vacancies for the post of Panchayat Teacher in the particular Panchayat. The counseling being the last stage at the stage of offering appointment, in the case of the petitioner, therefore, could not have been held until a draft merit and final merit list was prepared. Learned counsel for the petitioner however has not produced either a draft merit list or final merit list and, therefore, the direction of the Tribunal for only holding counseling of the petitioner in isolation in view of his being an applicant for the post of Panchayat Teacher reserved for Scheduled Caste Category (Male) cannot be said to be justified either on fact or in law.”



10. It further observed:

“The matter can be viewed from yet another angle. Admittedly no one having lesser marks than the petitioner has been appointed on the post of Panchayat Teacher and the petitioner, even if his case is accepted, would be only an empanelled candidate. By now, it is well settled that no indefeasible right is vested to a empanelled candidate for being appointed if the employer has not chosen to make such employment from such panel. In the present case, there is a government order dated 21.2.2011, which clearly prohibits making of appointment of Panchayat Teacher in the second phase where the process was not completed and to that extent reliance placed by both the learned counsel for the petitioner and State on the same circular of the State Government dated 21.2.2011 (Annexure-4) containing the decisions of the State Government can be appreciated only by examining the same”

11. The operative part of the order passed in the writ petition bearing CWJC No.25019 of 2013 reads as under:

“From reading of the aforesaid order of



the Tribunal, it does not become clear as to whether a merit list was ever drawn and the certificate of the petitioner was already collected and was sent for its verification. The petitioner in fact has come out with a different case that he was not even called for counseling. As noted, when the merit list was not prepared the stage of counseling had never reached. In fact, no one among the lot of applicants including the petitioner could have been appointed without preparation of the merit list.

In that view of the matter, this Court will refuse to issue any direction for implementation of such order of the Tribunal which, to say the least, is bad both on fact and in law.

That being so, this application must fail and is, accordingly, dismissed.”

12. When I look to the order dated 26.02.2016 passed in CWJC No.5542 of 2014 filed by the Mukhiya of Bariyarpur Gram Panchayat challenging the order passed by the Tribunal in favour of opposite party no.2, I find that while allowing the writ petition, this Court has clearly held that no direction can be issued for implementation of the order passed by the Tribunal since it is bad,



both on fact and in law. This Court has also held that the Tribunal's order is not required to be implemented and no pressure can be brought upon the Mukhiya to implement the order and direction which has been held to be bad in law.

13. Such being the position in law, the petitioner, who was Panchayat Secretary of the Gram Panchayat, in question, could not have either held counseling of the complainant or made his appointment to the post of Panchayat Teacher. In the aforesaid background of the facts, when I look to the allegations made in the complaint, I find substance in the submissions made by Mr. Rajendra Narayan, learned Senior Advocate for the petitioner that a malicious complaint was lodged by the complainant of the case only because he was not appointed as a Panchayat Teacher.

14. True it is that certain allegations have been made in the complaint against the petitioner and those allegations have been supported by the complainant in his statement made on oath, but when no merit list was prepared and no counseling was made, there was no question of making any demand for offering employment.

15. The impugned order passed by the learned Sub Divisional Judicial Magistrate does not show judicial application of mind. The order has been passed only after recording the statement of



complainant on oath without examining any other witness. The need for proper application of mind by the courts at the stage of summoning has been highlighted by the Supreme Court in **Pepsi Foods Ltd. & Anr. vs. Special Judicial Magistrate & Ors.** reported in (1998) 5 SCC 749. In the said case the Supreme Court has held that summoning of an accused in a criminal case is a serious matter and criminal law cannot be set in motion as a matter of course. It has also been held that before summoning an accused, the Magistrate must carefully scrutinize the evidence brought on record. It has further held that at the stage of summoning an accused, the court may put certain questions to the victim in order to find out bona fide of the complainant as, at that stage, the court is not a mute spectator. Apparently, no such effort was taken by the learned Sub Divisional Judicial Magistrate and the order has been passed in a mechanical manner.

16. At this juncture, I would also like to advert to the principles laid down by the Supreme Court in its various decisions in respect of exercise of jurisdiction under Section 482 of the CrPC.

17. In **Smt. Nagawwa vs. Veeranna Shivalingappa Konjalgi & Others** reported in (1976) 3 SCC 736 the Supreme Court enumerated the cases where an order of Magistrate issuing process



against the accused persons can be quashed or set aside. It reads as under:-

“5. Mr. Bhandare laid great stress on the words “the truth or falsehood of the complaint” and contended that in determining whether the complaint is false the court can go into the question of the broad probabilities of the case or intrinsic infirmities appearing in the evidence. It is true that in coming to a decision as to whether a process should be issued the magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a prima facie case against him. The magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. Once the magistrate has exercised his discretion it is not for the High Court, or even this Court, to substitute its own discretion for that of the magistrate or to examine the case on merits with a view to find out whether or not the allegations in



the complaint, if proved, would ultimately end in conviction of the accused. These considerations, in our opinion, are totally foreign to the scope and ambit of an inquiry under Section 202 of the Code of Criminal Procedure which culminates into an order under Section 204 of the Code. Thus it may be safely held that in the following cases an order of the magistrate issuing process against the accused can be quashed or set aside:

(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are



wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.

The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings.”

18. In State of Haryana & Others Vs. Bhajan Lal and Others reported in **1992 Supp (1) SCC 335**, certain parameters have been pointed out in para 102 by the Supreme Court under which a prosecution launched in a complaint or FIR may be quashed in exercise of jurisdiction under Section 482 of the Code. These are as follows:-

“(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.



(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

19. Having regard to the facts and circumstances of the case and taking into consideration the law laid down by the Supreme



Court in the decisions noted hereinabove, since the complaint, in question, is manifestly attended with mala fide and has been instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, the impugned order dated 22.05.2013 passed in Complaint Case No.C-1/340 of 2013 by the Sub Divisional Judicial Magistrate, Sadar, Sitamarhi cannot be sustained. It is set aside, accordingly. Consequently, Complaint Case No. C-1/340 of 2013 is dismissed.

20. The application stands allowed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
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