

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.30291 of 2013

Arising Out of PS.Case No. -27 Year- 2012 Thana -PATNA COMPLAINT CASE District- PATNA

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1. Rajesh Kumar, son of late Surendra Prasad, Proprietor & Distributor of UNINOR Unitech Wireless Pvt. Ltd., Jai Hanuman Enterprises, Kachahri Road, Barh, P.S.- Barh Bazar, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. Setu Saket, S/O Shri Surendra Kumar, Proprietor of M/S Sinha General Store, Phone Ghar, Mohalla- Chondi, P.S.- Barh, District- Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Amaresh Kumar Sinha, Advocate

For the Opposite Party/s : Mr. Jitendra Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 20-01-2017

This quashing application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 19.05.2012 passed by the Judicial Magistrate, 1st class, Barh, in Complaint Case No.27-C of 2012, by which he has taken cognizance under Section 504 Indian Penal Code.

Heard learned counsel for the petitioner and the learned APP for the State.

It has been submitted that continuance of the proceeding against the petitioner is totally abuse of process of the Court. From the nature of allegation in the Complaint Petition, no ingredients of Section 504 Indian Penal Code is made out.



Learned APP has submitted that the witnesses have supported the case.

I have perused the impugned order and the allegation in the Complaint Petition as well as statement of the witnesses annexed with the petition.

This Court finds that the complainant has alleged in the Complaint Petition that on the date of occurrence the complainant was sitting in the shop, whereupon, the petitioner and other accused persons came. The petitioner asked the complainant to withdraw the case filed by him in the District Consumer Forum. Accused Nos. 2 and 4 alleged to have supported the action of the petitioner. The complainant declined to withdraw the case and then accused Nos. 3 and 4 told the complainant that if he will not withdraw the case then his retailer-ship will be cancelled. The complainant thereafter made demand of prize under the scheme from accused No.5, but all the accused declined to give any prize under the scheme.

Xerox copy of the Solemn Affirmation of the complainant and the statement of the witnesses recorded during enquiry have been filed with the petition, wherein, the witnesses have merely stated that the petitioner and other accused told the complainant to withdraw the case in the Consumer Forum.

It appears from the impugned order that on similar



evidence the learned Magistrate did not find *prima facie* case against other accused. However, learned Magistrate found *prima facie* case against this petitioner only under Section 504 Indian Penal Code. In fact, on perusal of the allegation, Solemn Affirmation of the complainant, and the statement of the witnesses recorded under Section 202 Cr. P.C., this Court finds that there is no ingredient of Section 504 Indian Penal Code.

In view of such, order of cognizance, dated 19.05.2012, suffers from illegality.

Accordingly, the order of cognizance dated 19.05.2012, passed by the Judicial Magistrate, 1st class, Barh, in Complaint Case No.27-C of 2012 as well as entire proceeding of Complaint Case No.27-C of 2012, is hereby quashed.

The application stands allowed.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	28-01-2017
Transmission Date	28-01-2017

