

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.4156 of 2014

Arising Out of PS.Case No. -318 Year- 2013 Thana -KHAZANIHAT District- PURNIA

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Ashok Kumar Verma, S/O Bhagwan Sah, Resident of village- Meha Bazar, Jhanda Chawk, Durgabari Road, District- Purnia

.... Petitioner/s

Versus

1. The State of Bihar

2. Narayan Jee Verma, S/O Late Chhotelal, Resident of Ganguly Para, P.S.- Khat (Sahayak), District- Purnia, Proprietor of Narayan Jewellers, Bhatta Bazar, Purnia

.... Opposite Party/s

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Appearance :

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

For the State : Mr. Rajendra Pd. Nat, A.P.P.

For the O.P. No. 2 : Mr. Krishna Pd. Singh, Sr. Advocate.
Mr. Mithilesh Kumar Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 26-07-2017

Heard learned counsel for the parties.

2. This application, under Section 482 of the Cr.P.C., has been filed by the petitioner challenging order dated 20.02.2014 passed by the Chief Judicial Magistrate, Purnia in K.Hat (Sahayak) P.S.Case No. 318 of 2013 dated 02.08.2013, whereby he has taken cognizance of the offence under Sections 182, 211 and 500 of the Indian Penal Code and issued summons to the accused/petitioner to face trial in this case.

3. The allegation, in brief, as stated in the complaint, on



the basis of which present FIR was instituted, is that complainant is the owner of a Jewelry shop in Purnia, a social activist and one of founder members of Rotary Club, Purnia, so he has respect in the society, but the accused petitioner of this application made him an accused in K.Hat (Sahayak) P.S.Case No. 628 of 2012 dated 22.12.2012 merely on the basis of suspicion, though petitioner admits in the FIR, that he could not identify any of the assailants. So by making him accused in that case, his prestige in the society has been lowered down. Knowing the fact that the complainant was not involved in the occurrence, he was made accused in the case. The police after investigation did not find his involvement and not sent up him for trial.

4. Learned counsel appearing on behalf of the petitioner contends that an attempt of life was made on the petitioner causing fire arm injury in his chest by miscreants, so lodged a police case i.e., K.Hat (Sahayak) P.S.Case No. 628 of 2012 dated 22.12.2012 registered under Sections 307, 324, 394 and 120B of the Indian Penal Code and Section 27 of the Arms Act also. The petitioner, being an informant in that case, has clearly stated that he could not identify any of the accused, as they had covered their faces but raised suspicion against the present complainant/O.P. NO. 2. It is true that police not sent up him for trial and submitted final form but considering the



evidence collected during investigation, the material available in the case diary, the Chief Judicial Magistrate, Purnia, differing with I.O's conclusion, took cognizance of offence against the complainant in the case by order dated 12.03.2013 under Sections 324, 307, 394 and 120B of the Indian Penal Code as well as under Section 27 of the Arms Act. He further submits that complainant/O.P. No. 2 challenged that order by filing a revision petition in the court of learned Sessions Judge, but the same was dismissed. He again preferred quashing petition against the said dismissal order before this Court that too was dismissed, so order taking cognizance attained finality.

5. It is further submitted that after cognizance order, the present complaint was filed on 20.04.2013. Learned counsel further contends that taking the entire allegation, as levelled in the complaint, in its entirety, do not make out any, *prima facie*, case under Sections 182, 211 and 500 of the Indian Penal Code particularly in view of the fact that in the K.Hat (Sahayak) P.S. Case No. 628 of 2012, cognizance has also been taken in the matter, which is upheld by the revisional court and this Court also declined to interfere in the said order. So in order to wreck personal vengeance on account of the fact that petitioner suspected the involvement of the O.P. No. 2 in a case of attempt to murder, this complaint has been lodged.

6. Whereas, learned counsel for the O.P. No. 2 submits



that a case under Sections 182, 211 and 500 of the Indian Penal Code is made out as the police, after investigation, submitted charge sheet in this case against the petitioner and also cognizance has been taken in the matter by the court.

7. Having considered rival submissions of both sides and on perusal of the record, this Court finds that the present case is filed in the background that the petitioner, being informant of K.Hat (Sahayak) P.S.Case No. 628 of 2012, falsely levelled allegation against the present complainant/O.P. No. 2, giving false information to the police and the false charge was levelled with intention to harass him, moreover, it is also lowered down his reputation in the society. Let us analyze Sections 182, 211 and 500 of the Indian Penal Code, which read as follows:

182. False information, with intent to cause public servant to use his lawful power to the injury of another person.- Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant-

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.



211. False charge of offence made with intent to injure.- Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if such criminal proceeding be instituted on a false charge of an offence punishable with death, imprisonment for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

500. Punishment for defamation.--Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

8. Section 182 stipulates that if any information is given to a public servant knowing such information is false coupled with intention to cause injury to the accused, whereas Section 211 stipulates that any person institutes or causes to be instituted any criminal proceeding against a person on the basis of false charge with intention to cause injury to him knowing the fact that the charge is not just or there is no lawful ground for such proceeding.

9. In the present case, the petitioner was shot by some miscreants and on account of that he lodged K.Hat (Sahayak) P.S.Case No. 628 of 2012 dated 22.12.2012 registered under Sections



307, 324, 394 and 120B of the Indian Penal Code and Section 27 of the Arms Act also. In the said occurrence, he suspected the involvement of the O.P. No. 2. The police registered the FIR against the O.P. No. 2 and completed investigation but submitted final form. However, considering the material on record, learned Chief Judicial Magistrate, Purnia, differing with the conclusion of the Investigating Officer, has taken cognizance of the offence under Sections 307, 324, 394 and 120B of the Indian Penal Code and also under Section 27 of the Arms Act against the O.P. No. 2.

10. It is settled principle of law that a Magistrate may differ with the police report on the basis of materials available in the case diary. The accused-O.P. No. 2, in that case, challenged the cognizance order before the Sessions Court and the same was dismissed by order dated 30.04.2014 passed in Criminal Revision No. 197 of 2013 and this order was challenged before this Court in quashing application but the same was also dismissed, hence cognizance order dated 12.03.2013 has attained finality in the matter as there is sufficient ground for proceeding against the O.P. No. 2 in K.Hat (Sahayak) P.S.Case No. 628 of 2012.

11. In the backdrop of said facts, it cannot be held that an information knowing it to be false for causing injury to the accused, O.P. No. 2 or to defamation was given by the petitioner as informant



in K.Hat (Sahayak) P.S.Case No. 628 of 2012, hence no *prima facie* case under Sections 182, 211 and 500 of the Indian Penal Code is made out against the petitioner. Moreover, the present complaint was filed on 20.04.2013 after taking cognizance against the complainant/O.P. No. 2 in K.Hat (Sahayak) P.S.Case No. 628 of 2012. Therefore, it is apparent that in order to wreck personal vengeance against the petitioner, the present case has been filed.

12. So for the aforesaid reasons, the entire criminal proceeding including the order taking cognizance dated 20.02.2014 passed by the Chief Judicial Magistrate, Purnia in K.Hat (Sahayak) P.S.Case No. 318 of 2013 is set aside. This application stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	AFR
CAV DATE	NA
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