

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.9523 of 2014

Arising Out of PS.Case No. -220 Year- 2013 Thana -GAYA COMPLAINT CASE District- GAYA

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Rama Shankar Mishra @ Rama Sankar Pandey S/o Late Laljee Pandey at present
Block Supply Officer, Gurua, P.S. Gurua, District Gaya

.... Petitioner

Versus

1. The State of Bihar
2. Shusma Devi W/o Raj Kumar Sao Resident of Gurua, P.O.+P.S. Gurua District
Gaya

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Rana Pratap Singh, Advocate
For the State : Mr. T.N. Thakur, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 25-08-2017

Heard learned counsel for the parties.

2. The petitioner seeks quashing of the criminal proceeding in Complaint Case No.C220/13/2650/13 as his discharge petition dated 10.03.2015 was rejected by the court of Additional Sessions Judge-V, Gaya in Sessions Trial No.102 of 2014.

3. Brief fact stated in the complaint is that the accused, the Block Supply Officer, Gurua sexually exploited her for a year on the promise of issuing her a licence of a PDS shop. On 03.10.2012 the complainant learnt that her application for allotment of PDS shop was rejected but again on assurance of issuing her the said licence, the accused continued to sexually exploit her. Ultimately she filed Gurua P.S. Case No.102 of 2012 under Section 376 IPC but up-till-now the police has not taken action against him so she filed the complaint.



4. Learned counsel for the petitioner submits that the petitioner was the Block Supply Officer, Gurua. This is well known to the complainant that he was not the licensing authority rather the licensing authority is the S.D.M. The petitioner had only submitted the report to the S.D.M. whether there is any requirement of PDS shop in view of the application submitted by the complainant and the petitioner submitted enquiry report to the SDM, Sherghati that there is no vacancy of PDS shop considering the ratio of the population in the Panchayat and the existing PDS shops. On that basis the S.D.M., Sherghati rejected the application filed by the complainant by order dated 03.10.2012. Being aggrieved by the report submitted by the petitioner relating to no vacancy for allotment of new PDS shop in the area, the complainant filed a false police case and police conducted the investigation and finding the allegation false submitted final form. She also filed a petition relating to the same allegation in the Janta Darbar of the District Magistrate, Gaya. The S.D.M., Sherghati enquired and submitted his detailed report, annexed as Annexure-4, finding the allegation false. The mother-in-law and sister-in-law of the complainant too had not supported the case and that report was accepted by the district administration. It is further submitted by learned counsel for the petitioner that petitioner is a government servant and launching a prosecution in connection with the discharge



of his duty, sanction under Section 197 Cr.P.C. has not been obtained as the same is mandatory. It is a malicious case lodged only for the reason that petitioner submitted a report against the complainant. The Magistrate had all the materials before him, namely the final report submitted by the police in Gurua P.S. Case No.102 of 2012 registered for same offence, the detailed enquiry report of the S.D.M., Sherghati relating to the same allegation and report submitted by the petitioner not recommending licence to the complainant on her application for issuance of a licence for a PDS shop as well as order dated 03.10.2012 of the S.D.M. rejecting complainant's application for issuance of licence for P.D.S. shop. Learned counsel for the petitioner placed reliance in the case of M/s Pepsi Foods Limited vs. Special Judicial Magistrate, reported in (1998) 5 SCC 749 in which the Hon'ble Supreme Court has held that summoning of an accused in a criminal case is a serious matter and the criminal law cannot be set into motion as a matter of course. In the present case the learned Magistrate has also not applied his mind to the facts of the case and the materials available before him and these materials are not sufficient for the complainant to succeed in bringing the charge home against the accused. The complainant is a married lady of 45 years of age and runs an NGO besides this there is no medical evidence. All these facts were not considered and mechanically cognizance was taken and even



discharge petition was rejected. It is next submitted that there is allegation of sexual exploitation by the petitioner on the pretext of providing her a licence for the PDS shop but the petitioner is not licence issuing authority.

5. Having considered the rival submissions and on perusal of the records, this Court finds that the petitioner at the relevant point of time was a Block Supply Officer, Gurua. The complainant applied for licence for a PDS shop before the S.D.M., Sherghati. A report regarding requirement of PDS shop in the locality for which she desired for running a P.D.S. shop was called for from Block Supply Officer, this petitioner, he accordingly, submitted the report dated 07.09.2012 that there is no further requirement of any PDS shop in the said Gram Panchayat and on that very basis the S.D.M., Sherghati rejected the application of the complainant vide Annexure-3. Thereafter the present complaint has been filed, she also filed a complaint in the Janta Darbar of the District Magistrate, Gaya and the same was enquired by the S.D.M., Sherghati. The detailed enquiry report of the S.D.M., Sherghati is Annexure-4 and he finds the allegation false, the report further reveals that the mother-in-law and sister-in-law of the complainant denied the allegation. The complainant had earlier lodged a police case also relating to the same offence being Gurua P.S. Case No.102 of 2012 and police after



investigation found the case false. All these materials were before the learned Magistrate while taking cognizance in the matter but the order of cognizance shows that these materials on record were not considered so there is no application of mind as no reasoning has been assigned and in mechanical way cognizance was taken by the court below. In the case of M/s Pepsi Foods Limited vs. Special Judicial Magistrate (supra), the Hon'ble Apex Court has held:

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

6. In view of the said proposition the Magistrate requires to carefully scrutinize the evidence brought on record and may himself put question to the complainant and the witnesses to elicit



answers, the truthfulness of the allegation or otherwise thereafter to examine if any offence is *prima facie* committed by the accused or not. In the present case the materials brought before this Court shows that the present complaint is maliciously filed by the complainant so its continuation would be an abuse of the process of the court so the entire criminal proceeding of Complaint Case No.C220/13/2650/13 inclusive of order taking cognizance and other subsequent orders passed in Sessions Trial No.102 of 2014, pending in the court of learned Additional Sessions Judge-V, Gaya is hereby quashed.

7. In the result, this application is allowed.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
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