

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.26395 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- DARBHANGA

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1. Sarwar Imam S/O Late Haji S.M. Zareef Resident Of Village- Bahera, P.S- Bahera, District- Darbhanga.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Naushad Alam S/O Late Md. Ishaque Resident Of Village- Mahouddinpur Pakri, P.S- Bahera, Ali Naar, O.P- District- Darbhanga.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Iqbal Asif Niazi
For the Opposite Party/s : Mr. S.Ehteshamuddin(App)

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

Date: 08-05-2017

This criminal miscellaneous has been filed for quashing the order dated 31.08.2004 passed by the learned Additional Chief Judicial Magistrate, Benipur, Darbhanga in Bahera P.S. Case No. 245 of 2003 whereby and whereunder, cognizance has been taken under Sections 147, 149, 323, 341, 380, 448 and 384 of the Indian Penal Code against the petitioner and consequently for quashing the entire criminal proceeding pending against the petitioner in connection with the present case as well as the revisional order dated 22.09.2005 passed by learned Sessions Judge, Darbhanga in Criminal Revision No. 382 of 2004 whereby revision filed by the petitioner against the cognizance order was dismissed.



2. Heard the learned counsel for the petitioner, learned APP for the State and learned counsel for O.P. No. 2.

3. One Naushad Alam filed a compliant petition vide C.R. No. 205 of 2003 in the court of learned Additional Chief Judicial Magistrate, Benipur, Darbhanga alleging interalia that he is the then Secretary of Masiha Kalyan Sansthan registered by Govt. of Bihar and on 19.08.2003 at about 9 a.m. while he was sitting in the office, the petitioner, armed with pistol, came there along with four other unknown persons and demanded ransom of Rs. 1,000/- and when he made protest then all the accused persons assaulted him with fists and slaps at the instance of the petitioner. Due to alarm being raised the witnesses came there and saw the entire occurrence and thereafter, the petitioner fled away by opening fire by pistol in the air and at the time of departure he took away a box containing some important documents and cash of Rs. 11,000/-.

4. The aforesaid complaint petition was forwarded to the Bahera P.S. under Section 156 (3) for institution and investigation of the case resulting Bahera P.S. Case No. 245 of 2003 dated 20.10.2003 was registered and in that case, after completing investigation, police found the case false and submitted final form dated 28.03.2004 for initiating the proceeding under Section 182 of 2011 against the informant but the learned Additional Chief Judicial Magistrate



differing from the police report took cognizance under the impugned order.

5. Submission on behalf of the petitioner is that there is absolutely no material in the police paper, so as to justify a different view taken by the learned Additional Chief Judicial Magistrate. It has further been submitted on behalf of the petitioner that simultaneously three complaints were lodged against the petitioner by different persons at the behest of one person with whom the petitioner is on the inimical terms. All the three complaints were filed through one advocate for all such complaints F.I.R. was instituted and police did not find any of the cases, referred to above, to be true. However, either differing with the opinion of police report or taking the protest, cognizance has been taken in all the three cases.

6. The learned counsel for the petitioner further submits that all such cases have been lodged at the instance of one Md. Jane Alam, who was an accused of a rape case. A *Panchyati* was held to put some social pressure on Md. Jane Alam and, as such, in *Panchatati*, petitioner took a pro-active part, resulting the petitioner is now being harassed with series of cases at the instance of aforesaid Md. Jane Alam.

7. Moreover, the case has been compromised and compromise petition has also been filed in the instant case vide



annexure-8 to the supplementary affidavit. Further two out of such cases have been quashed, one under Criminal Miscellaneous No. 26422 of 2011 vide order dated 21.07.2014 and other under Criminal Miscellaneous No. 26393 of 2011 vide order dated 02.05.2017.

8. The learned APP and learned counsel for O.P. No. 2, on the other hand, submit that the learned A.C.J.M. after finding some material in the case diary has taken cognizance and further criminal revision filed by the petitioner was also dismissed. The learned counsel for O.P. No. 2 submits that regarding compromise he has got no instruction.

9. From reading of the First Information Report of the present case and the materials collected during investigation in case diary, it appears that vague allegations of demand of ransom, assault and taking away box containing some important documents and cash of Rs. 11,000/- have been alleged against the petitioner. The case, therefore, appears to be actuated by mala-fide motives. From annexure-8 of supplementary affidavit, it reveals that the matter has also been compromised and compromise petition has been filed by the informant in this case, the copy of which was supplied to the learned counsel for O.P. No. 2 much earlier but no counter affidavit has been filed to rebut the same.

10. Considering the aforesaid background of the case and



the fact that there is nothing on the record to justify different view in the matter, the order taking cognizance dated 31.08.2004 passed by the learned Assistant Chief Judicial Maigstrate, Benipur in Bahera P.S. Case No;. 245 of 2003 and order dated 22.09.2005 passed in Criminal Revision No. 382 of 2004 by learned Sessions Judge, Darbhanga are held to be bad in law and consequently the same are set aside.

11. In the result, this criminal miscellaneous application stands allowed.

(Jitendra Mohan Sharma, J)

sushma/-

AFR/NAFR	NAFR
CAV DATE	-NA-
Uploading Date	10.05.2017
Transmission Date	10.05.2017

