

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.34891 of 2011

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Jitendra Kuer @ Jitendra Prasad Kunwar, S/o Late Kapildeo Kuer, R/O
mohalla- Teachers' Colony, Ahiyapur, P.S.- Ahiyapur, District-
Muzaffarpur

.... Petitioner

Versus

1. The State Of Bihar
2. Manohar Kumar Singh, son of Satyendra Kuer, resident of village-
Shekhpur. P.S. Ahiyapur, District- Muzaffarpur

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Ansul, Advocate
Mr. Archit Rajpal, Advocate
Mr. Navneet Kumar, Advocate
For the O.P. No. 2. : Mr. Satish Kumar Singh, Advocate
For the Opposite Party : Mr. Anant Kumar(App)

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL ORDER

8 05-09-2017 The present Criminal Miscellaneous has been filed

for quashing the order dated 23.04.2010 passed in Protest-
cum-Complaint Case No. 3234 (C) of 2009, passed by Sri
N.K. Thakur, the then learned Judicial Magistrate 1st Class,
Muzaffarpur, whereby and whereunder the learned Magistrate
has took cognizance under Sections 323 and 417 of the Indian
Penal Code against the petitioner and directed to issue
summons against the petitioner.

Complaint case No. 1250 of 2009 was filed by one
Kapildev Kuer (now deceased) with the allegation that the
complainant was freedom fighter and the accused was his son.



The complainant used to receive freedom fighter pension from the government of Bihar and from the government of India. As the complainant was semi-literate and he used to keep all the papers, pass-book of account no. 10235755654 with the State Bank of India and A.T.M. Card and the accused used to keep all the money with him. Due to illness, the complainant urgently required some money, for the said purpose on 17.05.2009 at 7 A.M., he went to the residence of the accused and demanded all his papers, pass-book and A.T.M. Card. The accused became angry and threw him out of the campus by indulging in decent behaviour. The said complaint was sent to the police under Section 156(3) Cr.P.C. vide order dated 21.05.2009 and the police instituted Ahiyapur P.S. Case No. 180 of 2009 under Sections 406, 417, 420, 467/120-B of the Indian Penal Code. Police after investigation, submitted final form in the case after recording the statement of the wife of the complainant that the younger son of the complainant namely Satyendra Kuer took the complainant to Muzaffarpur and got lodged a false case and accordingly, on 28.06.2009 final form was submitted. During the proceeding, the complainant Kapildeo Kuer died on 29.05.2009. After his death, a protest petition was filed by Manohar Kuer Singh, grand-son of the



deceased and son of Satyendra Kuer against whom specific finding was recorded by the police that the case was falsely instituted at his instance. The protest petition was filed on 24.06.2009. Final Form filed by the police was accepted and protest was treated as a fresh complaint case and thereafter protest petition was numbered as 3243(C) of 2009. On that complaint case the complainant was examined and thereafter three inquiry witnesses namely, Avinash Kuer, Satyendra Kuer and Bebi Kumar Devi were examined and then cognizance has been taken under Sections 323 and 417 of the Indian Penal Code, both the offences are compoundable and as per Section 249 of the Cr.P.C. when the proceeding have been instituted in the above complaint, the complainant is absent and offences may be compounded. The Magistrate may discharge the accused. Here, the complainant died and, as such, in his absence this protest complaint cannot be proceed. It is submitted that the petitioner is a retired high school teacher, he was in service from 1983 and retired on 31.01.2010. He draws a pension of Rs. 18,000/- (rupees eighteen thousand) only per month. His elder son is also a high school teacher and his younger son is an Engineer working in J.P. Group in Delhi. He is substantial person and



has no interest or reason to indulge in such petty affairs. The mother during investigation has stated that younger son got instituted the false case and, as such, the order taking cognizance is fit to be set aside.

On the other hand, the learned counsel for the complainant submits that the complainant has got *locus standi* as he is witness in the complaint case and he can proceed with the case.

After considering the material available on the record, cognizance has been taken which is quite proper, legal and correct.

Having considered the submission urged at the Bar, going through the record and finding that the grand-mother of the complainant i.e. wife of the original complainant has stated before the investigating officer that the complaint case was not filed by her husband (Kapildev Kuer) rather it was got filed by her youngest son Satyendra Kuer and the present complainant is the son of the Satyendra Kuer and, as such, it appears that due to family dispute the case has been filed and putting the petitioner on trial will be misuse of the process of law and further it will be wastage of the Court's time.

In the result, the impugned order dated 23.04.2010



passed by Sri N.K. Thakur, the then learned Judicial Magistrate 1st Class, Muzaffarpur is hereby quashed and this Criminal Miscellaneous stands allowed.

(Jitendra Mohan Sharma, J.)

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