

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.42332 of 2016

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Kumar Shailendra S/o Shri Rajendra Prasad R/o Vill- Rampur, P.S.-
Rampur, District- Gaya. at present posted as Block Development Officer,
Obra Block, District- Aurangabad.

.... Petitioner

Versus

1. The State of Bihar.
2. Shri Pramod Kumar S/o Ram Swaroop Yadav R/o Village Fateha, P.S.-
Obra, District- Aurangabad.

.... Opposite Party

with

Criminal Miscellaneous No.45417 of 2016

Arising Out of PS.Case No. -298 Year- 2015 Thana -AURANGABAD COMPLAINT CASE
District- AURANGABAD

- =====
1. Sant Kishore, son of Shri Khedan Sharma, resident of Village Ushari,
PS Mehandia, District Arwal. At present posted as Assistant in Obra
Block, PS Obra District Aurangabad
 2. Upadhyay Kumar Mangalam, son of Late Ramashish Upadhyay,
resident of Mohalla Janpuri, Road No. 2 New Area, PS Aurangabad
(Town), District Aurangabad, at present posted as Nazir in Block, PS
Obra District Aurangabad
 3. Shiv Nandan Prasad Singh @ Sukhnandan Prasad Singh, son of Late
Baliram Prasad Singh, r/o Village Pratap Pur, PS. Goh, District
Aurangabad. At present polsted as Panchayat Secretary, Obra Block, PS
Obra, District Aurangabad

.... Petitioners

Versus

1. State of Bihar
2. Shri Pramod Kumar S/o Ram Swaroop Yadav R/o Village Fateha, P.S.-
Obra, District- Aurangabad.

.... Opposite Party

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Appearance :

(In Cr.Misc. No.42332 of 2016)

For the Petitioner : Mr. Ashok Kumar Singh

For the Opposite Party/s : Mr. Sri Ajay Kumar, APP

(In Cr.Misc. No.45417 of 2016)

For the Petitioners : Mr. Ashok Kumar Singh

For the Opposite Party/s : Mr. Sri Anuj Kumar Srivastava, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL ORDER



6 03-11-2017 Both the Cr. Misc. No.42332 of 2016 and Cr. Misc. No. 45417 of 2016 are being disposed of by this common judgment/order as the same impugned order taking cognizance dated 4.4.2016 passed in Complaint Case No. 298 of 2015 is under challenge in both the applications.

 Heard learned Counsel for the petitioners as well as the learned Counsel appearing on behalf of the State.

 The petitioners seek quashing of the order dated 4.4.2016 passed by the learned SDJM Daudnagar in Complaint Case No. 298 of 2015, thereby taking cognizance of the offence under Sections 323 and 504/34 of the IPC and also issued summons against the petitioners to stand trial in the case.

 The brief fact giving rise to the case is that a complaint was filed by Opposite party No. 2 that Ajit Kumar, his elder brother, was one of the candidates who contested the election to the post of Chairman of PACS in the year 2014, but the accused No. 1, the petitioner in Cr. Misc. No. 42332 of 2016, in connivance with another candidate Subodh Kumar Singh got cancelled 24 votes and declared Subodh Kumar Singh elected by a margin of two votes. On 7.8.2015 at the direction of his elder brother he went to the office of the petitioner for filing nomination for the post of Executive Member of PACS and entered into the chamber of the Block Development Officer to make certain query. On this the petitioner scolded, abused, threatened him and also tried to strangulate him, any how he pushed the BDO and



escaped away.

Learned Counsel for the petitioner in the first case submits that that the petitioner was BDO at the relevant point of time and on 7.8.2015 while discharging his official function in his chambers, the complainant along with his brother and other persons entered in his chambers and started making demand of form for filling up nomination for the Executive Member of PACS. The petitioner asked him to file petition for the form as per the Rules, but they insisted on taking the form without giving any application and on denial they started assaulting him. On raising alarm other staffs of the Block Office reached there and saved him. While retreating the accused persons also torn off many official documents. They made attempt to escape but one of the accused Pramod Kumar was apprehended by the staff who is complainant in the present case and the petitioner Kumar Shailendra, the then BDO lodged a FIR on the same day bearing Obra PS Case No. 79 of 2015 dated 7.8.2015 under Sections 307, 506/34 and other sections of the IPC against Pramod Kumar, the present complainant, his brother Ajit Kumar and one Ram Janam Yadav. Pramod Kumar was also apprehended on the spot and so maliciously filed this complaint on 13.8.2015 as an after thought with respect to the occurrence dated 7.8.2015. So this complaint is malicious in nature and in order to take personal vengeance this case has been filed. Learned Counsel for the petitioner further submits that no sanction under Section 197 Cr.P.C. has been obtained in this case before taking



cognizance as the petitioners are government servants.

Learned Counsel for the petitioners of Cr. Misc. No. 45417 of 2016 submits that petitioner No. 1 is Assistant, petitioner No. 2 is Nazir and petitioner No. 3 is Panchayat Secretary in the concerned Block were posted the relevant time. As these three petitioners were also the witnesses in the police case lodged by the BDO and had apprehended Pramod Kumar while returning after assaulting and ransacking the office so they too have been falsely implicated in this case.

Learned Counsel for the State supports the cognizance order.

Considering the rival submissions and on perusal of the record this Court finds that the petitioner Kumar Shailendra was BDO at the relevant period of time and had lodged Obra PS Case No. 79 of 2015 dated 7.8.2015 under Sections 307 and other sections of the IPC against Pramod Kumar, the present complainant, his brother and others alleging that they assaulted and ransacked the office of the petitioner and apprehended Pramod Kumar while other escaped and a police case was lodged against them. With respect to the same date of allegation dated 7.8.2015 the present complaint case was filed by Pramod Kumar, one of the accused of Obra PS Case No. 79 of 2015 after lapse of six days as an after thought to counter Obra PS Case No. 79 of 2015. So the present complaint appears to have been filed maliciously against the petitioner, the BDO, in order to wreak personal vengeance against him as he had filed police case against the complainant. On



this ground continuance of criminal proceeding against the petitioner would be abuse of the process of the court.

In so far as the petitioners of Cr. Misc. No. 45417 of 2015, at the relevant point of time in defence they had apprehended Pramod Kumar, the complainant while returning after assaulting Kumar Shailendra BDO and an FIR i.e. Obra PS Case No. 79 of 2015 on 7.8.2015 was lodged. Therefore the present complaint appears malicious in nature and filed in order to wreak personal vengeance against the petitioners.

So continuance of the entire criminal proceeding against the petitioners would be abuse of the process of the Court. Therefore, entire criminal proceedings inclusive of the cognizance order dated 4.4.2016 passed by the learned SDJM Daudnagar in Complaint Case No. 298 of 2015 is hereby quashed.

Both the applications stand allowed.

(Arun Kumar, J.)

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