

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.30462 of 2013

Arising Out of PS.Case No. -2595 Year- 2012 Thana -WEST CHAMPARAN COMPLAINT
District- WESTCHAMPARAN(BETTIAH)

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1. Bhubaneshwar Thakur, S/O late Braj Bhushan Thakur, resident of mohalla-
Prabhu Thakur Rosera, Post- Rosera, P.S.- Rosera, District- Samastipur
.... Petitioner/s

Versus

1. The State of Bihar
2. Kamaldeo Thakur, S/O Late Braj Bhushan Thakur, resident of mohalla- Prabhu
Thakur Rosera, Post- Rosera, P.S.- Rosera, District- Samastipur, at present
residing at- Mohalla Bel Bagh at Bettiah, P.S.- Bettiah Muffasil, District- West
Champaran

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Uma Shankar Singh, Advocate
For the Opposite Party No.1: Mr. G. S. Gupta, APP
For the Opposite Party No.2: Mr. Harendra Kumar Tiwary, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 02-02-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated, 13.05.2013 passed by the Judicial Magistrate, Bettiah, in Complaint Case No.2595-C/ Tr. No.2608 of 2013, by which the learned Magistrate after holding enquiry has found *prima facie* case against the accused-petitioner under Section 500 Indian Penal Code.

2. Heard learned counsel for the petitioner and the learned APP for the State as well counsel for the Opposite Party No.2.

3. It has been submitted on behalf of the petitioner



that the Complaint Petition is based on false statement. The complainant has stated in the complaint that he had not filed Complaint Case No.1127-C of 2011, but, in fact, he had filed the same. The order taking cognizance in Complaint Case No.1127-C of 2011 is also under challenge in Cr. Misc. No.14056 of 2012 in which notice has been issued from the Hon'ble Court. The complainant is harassing the petitioner along with his brother by filing different cases. The petitioner is the own brother of the complainant. From perusal of the Complaint Petition and the statement of the witnesses, no case under Section(s) 500 Indian Penal Code is made out.

4. Learned counsel for the petitioner further submitted that on perusal of allegation in the Complaint Petition and the statement of three witnesses recorded during enquiry, it will appear that no ingredients of Section 500 Indian Penal Code is made out in the case.

5. Learned counsel for the Opposite Party No.2 submitted that the petitioner filed written statement in Money Suit No.02 of 2011 that the complainant has filed complaint case against the petitioner. The petitioner, in this manner, has demoralized the complainant and he has filed Complaint Petition for action under Section 500 Indian Penal Code.



6. Learned counsel for the State as well as the Opposite Party No.2 has submitted that no illegality has been committed by the Magistrate. The Magistrate is mainly concerned with allegation made in the complaint or the evidence led in support of the same at the time of issue of process. He is only to be satisfied *prima facie* whether there are sufficient grounds for proceeding against the accused.

7. Learned counsel for the Opposite Party No.2 has relied on the judgment of the Hon'ble Supreme Court in the case of *Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and others* reported in *AIR 1976 Supreme Court 1947* in support of his submission.

8. Having heard the parties, perusal of the impugned order and the allegations made in the Complaint Petition as well as Solemn Affirmation of the complainant and statement of the witnesses, this Court finds that the complainant has alleged in the Complaint Petition that the complainant has filed Money Suit No.02 of 2011 against the petitioner and others. The petitioner filed petition on 24.09.2012 disputing territorial jurisdiction of the learned Munsif, Bettiah. In the aforesaid petition, the petitioner disputed territorial jurisdiction and made false and unfounded allegation against the complainant that the complainant had filed



Complaint Case No.1127-C of 2011 at Bettiah against this petitioner, though the complainant had not filed any Complaint Case till date against the accused-petitioner at Bettiah or anywhere else.

9. The complainant has further alleged in the Complaint Petition that in the petition challenging territorial jurisdiction of the Civil Court, there was no requirement of making such false allegation against the complainant, who is taken in high esteem at Bettiah and elsewhere as a retired University Teacher and an advocate at Bettiah as well at Rosera (Samastipur). The complainant has further alleged that such unwarranted false statement has been made by the accused-petitioner with intent to defame, malign and demoralize the complainant in the eye of public in general and to see that his image, prestige and reputation get erased. The complainant has got defamed on account of such statement of the accused. The complainant has filed petition dated 24.09.2012 along with the Complaint Petition. The complainant was examined on Solemn Affirmation. The statement of three other witnesses was also recorded by the learned Magistrate during enquiry.

10. Learned Magistrate has mentioned in the impugned order that in the petition dated 24.09.2012 filed by the petitioner before the learned Munsif, Bettiah, in Money Suit No.02



of 2011, the petitioner has stated that the complainant has filed Complaint Case No.1127-C of 2011 against the complainant, whereas, no such complaint was filed by the complainant and that the offence committed by the petitioner does not come under the exception of Section 499 Indian Penal Code.

11. From perusal of Solemn Affirmation of the complainant and the statement of the witnesses, which have been filed as Annexure-2 series with the petition and also the allegation in the complaint, this Court finds that there is mere allegation against the petitioner that he had stated in the petition dated 24.09.2012 filed in Money Suit No.02 of 2011, that the complainant had filed Complaint Case No.1127-C of 2011 against him.

12. The petitioner has filed the copy of the Complaint Case No.1127-C of 2011 dated 04.06.2011 filed by the complainant as Anneuxre-3. In the petition itself, it has been mentioned that the petitioner filed petition in Money Suit No.02 of 2011 on 24.09.2012 making statement that the complainant has filed criminal case i.e. Complaint Case No.1127-C of 2011 at Bettiah against him.

13. Section 499 Indian Penal Code lays down as follows:

"499. Defamation.----- Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm,



or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person."

14. In the instant case from the nature of allegation made in the Complaint Petition and the statement of the witnesses recorded during enquiry under Section 202 Cr. P. C. as well as Solemn Affirmation of the complainant, this Court finds that none of the ingredients of Section 499 Indian Penal Code is made out in the case.

15. The complainant has stated in the Complaint Petition that the petitioner has made false statement in the petition dated 24.09.2012 filed in Money Suit No.02 of 2011 with intent to defame, malign and demoralize the complainant, but from Annxure-3, it appears that the Complaint Case No.1127-C of 2011 was filed by the complainant on 04.06.2011. Moreover, from the Solemn Affirmation of the complainant and the statement of three other witnesses, this Court finds that none of the ingredients of Section 499 Indian Penal Code is made out and, therefore, the impugned order dated 13.05.2013 passed by the Judicial Magistrate, Bettiah, in Complaint Case No.2595-C/ Tr. No.2608 of 2013, by which he has found *prima facie* case against the accused-petitioner under Section 500 Indian Penal Code, is illegal and continuance of the criminal



proceeding against the accused-petitioner is abuse of the process of law.

16. In view of such, the order dated, 13.05.2013, passed by the Judicial Magistrate, Bettiah, in Complaint Case No.2595-C/ Tr. No.2608 of 2013 taking cognizance against accused-petitioner under Section 500 Indian Penal Code as well as entire proceeding is hereby quashed.

17. The application stands allowed.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	16-01-2017
Uploading Date	05-02-2017
Transmission Date	05-02-2017

