

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.43397 of 2013

Arising Out of PS.Case No. -33 Year- 2013 Thana -MUNGER COMPLAINT CASE District-
MUNGER

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1. Atul Singh @ Atul Kumar Singh, Son Of Late Dharamdeo Singh Resident Of Village - Ramnagar, Post - Jamalpur, P.S. - Naya Ram Nagar, District - Munger, Pin Code - 811214 (Bihar) Presently Working As Chief Staff Welfare Inspector, Eastern Railway - Jamalpur Work Shop, P.S. - Jamalpur, District - Munger.
 2. Madan Mohan Prasad, Son Of Late Dwarika Prasad Resident Of Quarter No. 8 ABC, Work Shop Road East Colony, Jamalpur, P.S. - East Colony, District - Munger, Pin Code - 811214 (Bihar) Presently Serving As Assistant Welfare Officer At Railway Workshop, Jamalpur, Munger.
 3. Anand Kumar Roy @ Anand Roy, Son of Late Bindeshwari Roy Resident of Quarter No. 729/AB, Albert Road, East Colony, Jamalpur, P.S. - East Colony, District - Munger, Pin Code - 811214 (Bihar) Presently Serving As Workshop Personnel Officer at Railway Workshop, Jamalpur, Munger.

.... Petitioners

Versus

1. The State Of Bihar
2. Jagrani Devi, Wife of Late Braj Mohan Lal and Widow and dependent of Late Uma Shankar Vishwakarma, Resident of Sadar Bazar Jamalpur, In Front of Meat Market, P.S. - East Colony, Jamalpur, District - Munger.

.... Opposite Parties

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Appearance :

For the Petitioners	:	Mr. D.K. Sinha, Sr. Advocate Mr. Anil Singh, Advocate
For the opposite party	:	Mr. Ranjay Kumar Jha, Advocate Mr. Subhash Kumar Jha, Advocate
For the State	:	Mr. Matloob Rab (APP-34)

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL ORDER

3 20-04-2017 The instant Criminal Miscellaneous has been

filed for quashing the cognizance order dated 24.07.2013

passed by the Chief Judicial Magistrate, Munger, in

Complaint Case No. 33(C) of 2013 in the matter of Jagrani



Devi Vs. Atul Singh and others, whereby and whereunder after finding prima facie case to be made out under Sections 120(B), 323/ 420/504 of the Indian Penal Code the order has been passed for issuing summons against the petitioners.

Heard the learned counsel for the petitioners, the learned A.P.P. for the State and learned counsel for the opposite party no.2.

Briefly stated the case as made out in Protest-cum-Complaint petition is that the brother of the opposite party no.2 namely Uma Shankar Vishwakarma was serving as Operator in the typing department, Eastern Railway Workshop Jamalpur. He died in harness on 29.03.2010. He was unmarried and he has not nominated any person to receive settlement dues in case of his death, but as per family declaration for the privilege of pass and ticket he had declared the name of the complainant Jagrani Devi. The complainant is said to have contacted the petitioners for settlement of dues in her name claiming to be successors of her deceased brother. It is alleged that the accused persons demanded bribe of Rs. 15,000/- each for payment of settlement dues and the complainant is said to have paid total Rs. 45,000/- to them. It has further been stated that Rs.



10,000/- each was further demanded by the petitioners along with Sujit Kumar, work-shop Personnel Officer and Animesh Kumar Sinha, CWM, but complainant could not pay the same. The complainant was paid Rs. 12779.50/- and Rs. 2481/- and thereafter no payment was made and on refusal she was abused and thrown out from the office.

Prior to Protest-cum-Complaint petition the complainant filed Complaint Case no. 1166(C) of 2011 which was sent under Section 156(3) Cr.P.C. directing the East Colony Jamalpur Police Station to lodge First Information Report and investigate the matter and accordingly East Colony Jamalpur Police Station Case No. 19 of 2012 was lodged. After completion of investigation the investigating officer, submitted final report mentioning therein that the case has been filed owing to mistake of fact. The officer-in-charge sent Memo no. 421 of 2012 dated 31.08.2012 to the complainant suggesting her to get required amount of Rs. 6, 27,355/- from Railway after submitting Succession Certificate.

On the basis of Protest-cum-Complaint petition and after examination of complaint on S.A. and further considering the statement of inquiry witnesses the learned



Chief Judicial Magistrate, Munger, passed the impugned order dated 24.07.2013.

Submission on behalf of the petitioners is that the Protest-cum-Complaint petition is nothing but abuse of the process of law and the order taking cognizance is bad in law. Admittedly, the three petitioners are railway employees and, as such, for their prosecution sanctioned under Section 197 Cr.P.C. is required, but no sanction has been obtained and without obtaining sanction the prosecution has been launched and cognizance has been taken, so on this ground alone the order taking cognizance is to be quashed. Further it is submitted that the claim of the complainant was examined by the Railway Board and the Railway Board has also directed to submit some documents including Succession Certificate, but the complainant without submitting those papers remained adamant on her demand and further lodged this false case. The story of the case has been concocted and fabricated only with a view to put pressure upon the petitioners to any how pay the settlement dues to the complainant. Deceased Uma Shankar Vishwakarma was unmarried and he had not submitted nomination for any person to receive settlement dues during



his service period. As per Railway Rules, settlement dues are paid equally to all legally eligible family members, but in this case only the complainant, sister of the deceased, is desirous for grabbing the entire amount of settlement ignoring share of other living relative of the deceased staff. The Chief Welfare Inspector made proper inquiry and thereafter submitted his report mentioning the other heirs of the deceased, vide Annexure-4, and as such, in this case Succession Certificate was required but the complainant only with a view to harass and put pressure lodged this case and, as such, the order impugned is fit to be quashed.

The learned counsel for the opposite party no.2 and the learned A.P.P, on the other hand, submit that the petitioners have taken bribe of Rs. 15,000/- each and further they were demanding Rs. 10,000/- each to settle the claim and, as such, the learned Chief Judicial Magistrate has rightly passed the impugned order. The statement made in the complaint petition was supported by the complainant on solemn affirmation and further inquiry witnesses namely Kumar Ravi Shankar and Kaushal Kishore have also supported the prosecution and, as such, there is no need for interference by this Court. The petitioners have not taken



bribe in discharging their official duty so no sanction is required. The defence of the accused persons cannot be looked into at this stage and, as such, the order dated 24.07.2013 is quite proper and correct.

Having considered the submission urged at the bar and going through the Protest-cum-Complaint petition and the order dated 24.07.2013 and noticing that the present complaint is nothing but an abuse of the process of the law having instituted to wreck, vengeance and malicious. Giving bribe and taking bribe both are punishable. Here as alleged the complainant herself entered into an illegal agreement and allegedly gave bribe in taking settlement amount illegally and thereafter knocked the door of justice to punish only the bribe taker which is hit by *pari delicto*. Previous sanction of the competent authority being a pre-condition for the court in taking cognizance of the offence, if the offence alleged to have been committed by the accused, it can be said to be an act in discharge of his official duty. The question of applicability of Section 197 of the Cr.P.C. touches the jurisdiction of the Magistrate in the matter of taking cognizance and, therefore, there is no requirement that an accused should wait for taking plea that cognizance



was taken without prior sanction of competent authority till the charges are framed. Assuming the provision 197 of the Code of Criminal Procedure applies, the accused can take such plea immediately after the cognizance is taken and process is issued and need not wait till the court reaches the state of framing of charge.

Here the defence of the accused is not to be looked into but admittedly they were public servant and in discharging of their official duties, they refused to settle the claim of the complainant and she has lodged this case and, as such, the provisions of sanction of the competent authority is necessary and for that reliance has been placed in the case reported in *AIR 2000 Supreme Court Cases page 3187 in the case of "Abdul Wahab Ansari Vs. State of Bihar and another"*. Reliance has also been placed in the case reported in *(1998) 1 Supreme Court Cases 205* in the case of *Suresh Kumar Bhikamchand Jain Versus Pandey Ajay Bhushan and Others*.

Here, in my view the complaint was filed with an oblique motive and ultimate conviction of the accused were bleaked.

In the result, this Criminal Miscellaneous is



allowed and the proceeding as against the petitioners including the order of cognizance dated 24.07.2013 passed by the learned Chief Judicial Magistrate, Munger in Complaint Case No. 33 (C) of 2013 is hereby set aside and quashed.

Accordingly, this Criminal Miscellaneous is hereby allowed.

(Jitendra Mohan Sharma, J.)

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