

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.36182 of 2010

Arising Out of P.S.Case No. Year- null Thana -null District- MUNGER

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Birendra Thakur, Son of Late Pitambar Thakur, Resident of village-Sugma, P.S.
Teliahat, District-Saharsa.

.... Petitioner

Versus

1. The State of Bihar,
2. Mohan Singh, Son of Sitaram Kushwaha, Resident of Mohalla-Shyampur, P.S.
Kotwali, District-Munger.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Advocate
Mr. Jay Prakash Singh, Advocate
For the Opposite Party/s : Mr. Ajit Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

Date: 04-05-2017

Heard learned counsel for the petitioner, learned
counsel appearing on behalf of O.P. No.2 and learned A.P.P.
appearing on behalf of the State.

2. This application has been filed under Section
482 of Cr.P.C. to quash the order dated 02.08.2010 passed in
Criminal Revision No. 48 of 2009 by the Court of Addl. Sessions
Judge-II, Munger affirming the order dated 15.01.2009 passed in
Complaint Case No. 1000 (C) of 2008 by the Judicial Magistrate, 1st
Class, Munger summoning the petitioner and one Vikash Chandra
Mishra, on enquiry, under Section 204 Cr.P.C. finding prima facie
case under Sections 323, 504, 426 and 379 of the I.P.C.

3. The facts relating to this application is that O.P.
No.2 Mohan Singh filed the Complaint Case No. 1000 (C) of 2008



with contention that he was running a clinic in the canteen of the Munger-Jamui Central Co-operative Bank, Munger (hereinafter to referred as Bank) since six years. On 01.09.2008, in the evening, petitioner being the Managing Director of the Bank, Vikash Chandra Mishra, Driver of the Bank along with 3-4 Police personnel came at his clinic and started to abuse him asking to vacate the clinic/shop on which he showed agreement saying that the shop is leased out till 2011 and if Bank wants to vacate the shop then Bank will have to get order from the competent Court. At that time, on the order of petitioner Birendra Thakur, Vikash Chandra Mishra, driver of the Bank, caught hold his hand and both dragged him from the clinic and caused assault to him taking the stick to the Police. At that time, driver Vikash Chandra Mishra snatched the golden chain worth of Rs. 24,000/- and the petitioner took cash of Rs. 700/- to his pocket.

4. After filing the Complaint petition by O.P No.2, on inquiry, the Judicial Magistrate, 1st Class, Munger summoned the petitioner and Vikash Chandra Mishra through order dated 15.01.2009 under Section 204 of Cr.P.C. finding prima facie case under Sections 323, 504, 426 and 379 of I.P.C. The petitioner filed the Criminal Revision No. 48 of 2009 against the said order, but the same was dismissed on 02.08.2010 by the Court of Addl. Sessions Judge-II, Munger.

5. Learned counsel for the petitioner submits that



the petitioner being the Class-II Officer of the State Government was posted on deputation as Managing Director of the Bank in view of Section 14(3) of the Bihar Co-operative Society Act, 1935 on the alleged date of occurrence. The complainant/O.P. No.2 entered in the chamber of the Chairman of the Bank and hot talks were exchanged between the Chairman and Complainant/O.P. No.2 and the petitioner also got information to the bank officials about using of unparliamentarily word and abuse by O.P. No.2. Thereafter, Chairman of the Bank took a serious view of the matter and directed the petitioner to take legal steps for vacating the shop/clinic of the Complainant/O.P.No.2 situated in the canteen of the Bank through office notes dated 01.09.2008, which would appear from Annexure-2. Accordingly, the petitioner issued a letter to the complainant/O.P.No.2 on the same day to vacate the clinic/shop detailing the facts about misbehaving to the Chairman of the Bank, but O.P. No.2 refused to take the notice. Thereafter, petitioner sent letter No. 1233, dated 03.09.2008 to the District Magistrate, Munger stating all the facts with request to give certain direction to the S.P. Munger and also to Officer-in-Charge of the local Police Station, so that the security of the Bank might not be disturbed, which would appear from Annexure-04. The complainant/O.P No.2 also filed Title Suit No. 27 of 2008 against the Notice dated 01.09.2008 issued by the petitioner to vacate the shop/clinic and only to give undue pressure upon the petitioner and Bank officials,



the complainant/O.P. No.2 lodged the Complaint Case No. 1000 (C) of 2008 under which the order dated 15.01.2009 has been passed to summon the petitioner and one Vikash Chandra Mishra, Driver of the Bank. Further submission is that since the act, as alleged in the Complaint petition, took place in the bank premises in which the petitioner and his driver are said to be involved as such sanction is required under Section 197 Cr.P.C. for taking cognizance of the offence against the petitioner as he was Class-II officer at the time of alleged occurrence, he was not removable to his office without sanction of the State Government.

6. Learned counsel for the complainant/O.P. No.2 submits that there is no doubt that the petitioner was Class-II Officer of the State Government and he could not be removed to his office without the sanction of the State Government, but the act, as alleged in the complaint petition, committed by the petitioner and his driver was in private capacity as such sanction is not required under Section 197 Cr.P.C. prior to summoning the petitioner and other co-accused under Section 204 Cr.P.C. for offence under Sections 323, 504, 426 and 379 of I.P.C.

7. On perusal of paragraph Nos. 11 to 16 of the petition, it appears that on 01.09.2008 the O.P. No.2 entered in the office of the Chairman of the Bank, where hot talks were exchanged in between the Chairman and the O.P.No.2. The Chairman of the Bank through office notes directed the petitioner to send the notice



to complainant/O.P. No.2 to vacate the shop/clinic situated in the canteen of the Bank. Thereafter, the petitioner sent notice to the O.P. No.2, which was refused by the O.P. No.2 and thereafter, letter was sent to the District Magistrate, Munger stating all the facts with request to give certain direction to the S.P. Munger and Officer-in-Charge of local Police Station so that the security of the Bank might not be disturbed. The complainant/O.P No.2 has not disputed the said facts in his counter affidavit. As such, the offence, as alleged, committed by the petitioner and his driver appears to be committed in the Bank premises in course of discharge of official duty. The allegation of snatching cash of Rs. 700/- from the pocket of the complainant- O.P No.2 by the petitioner, who is Class-II Officer of the State Government, appears to be absurd. As such before passing the summoning order, on inquiry, under Section 204 Cr.P.C. in the complaint Case No. 1000 (C) of 2008 without sanction of the State Government as required under Section 197 Cr.P.C. is illegal.

8. Having considered the facts and circumstances of the case, as stated above, order dated 15.01.2009 passed in Complaint Case No. 1000 (C) of 2008 summoning the petitioner and one Vikash Chandra Mishra, on inquiry, under Section 204 Cr.P.C. finding prima facie the case under Sections 323, 504, 426 and 379 of I.P.C. is illegal.

9. In the result, the impugned order dated 02.08.2010 passed in Criminal Revision No. 48 of 2009 by the



Court of Addl. Sessions Judge-II, Munger affirming the order dated 15.01.2009 passed in Complaint Case No. 1000 (C) of 2008 by the Judicial Magistrate, 1st Class, Munger summoning the petitioner and one Bikash Chandra Mishra, Driver of Bank, on enquiry, under Section 204 Cr.P.C. finding prima facie case under Sections 323, 504, 426 and 379 of the I.P.C and entire criminal proceeding of the aforesaid Compliant Case No. 1000 (C) of 2008 is hereby quashed. Accordingly, this application is allowed.

(Rajendra Kumar Mishra, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	10.05.2017
Transmission Date	10.05.2017

