

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.7808 of 2012

Arising Out of PS.Case No. -0 Year- null Thana -null District- EASTCHAMPARAN(MOTIHARI)

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Onkar Nath Singh, S/o Late Ramanand Singh, Resident of Village Akauna,
P.O+P.S Punpun, District Patna

.... Petitioner

Versus

1. The State of Bihar
2. Sagira Khatoon, W/o Late Washi Ahmad, Resident of Village Madhopur
Madhumalat, P.S Turkauliya, District East Champaran

.... Opposite Parties

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Appearance :

For the Petitioner	:	Mr. Shri Prakash Srivastava, Advocate Ms. Anu Priyadarshni, Advocate Mr. Navin Anand, Advocate
For the State	:	Mr. Mushtaq Alam, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 05-07-2017

The petitioner, a police personnel, has challenged the order taking cognizance dated 09.12.2011, passed by learned Chief Judicial Magistrate, Motihari in Complaint Case No.2434 of 2011 whereby cognizance is taken under Sections 147, 341, 323, 380 and 504 of the Indian Penal Code.

2. Learned counsel for the petitioner submits that the instant petition filed by Sagira Khatoon, the complainant of Complaint Case No.2434 of 2011, is malicious in nature. Further facts are elaborated by the learned counsel submitting that the petitioner at the relevant point of time was posted as Assistant Sub-Inspector at Turkauliya police station in the district of East Champaran. Sabbir Ahmad, son of the present complainant, was an accused in Turkauliya P.S. Case No.395 of 2011 and was evading arrest, therefore, the petitioner posted at the said police station forming a



raiding party went for execution of warrant of arrest against evading accused persons of various cases and in that connection he reached to the house of the complainant. Sabbir Ahmad, complainant's son was apprehended by the petitioner but his other family members and villagers assembled and started throwing brickbat on police party succeeded in getting away apprehended accused Sabbir. Relating to this occurrence, this petitioner lodged Turkauliya P.S. Case No.532 of 2011 on 15.10.2011. Being aggrieved by his action taken against son of the complainant, she filed this complaint on 17.10.2011 alleging that the petitioner called his son Sabbir and entered inside the house, misbehaved with family members and committed theft of box containing jewelleryes. As the petitioner has taken stern action against the complainant's son so in order to wreck vengeance this malicious complaint case has been filed. Moreover, the petitioner was discharging his official duty/function and had gone to the complainant's village for apprehending Sabbir Ahmad who is wanted in another criminal case but no sanction has been obtained for launching prosecution against him.

3. The learned Additional Public Prosecutor submits that there is no ground to interfere with the order of cognizance at this stage.

4. Having considered the rival submissions and on perusal of records it appears that the petitioner has brought on record a copy of the First Information Report of Turkauliya P.S. Case No.532 of 2011, dated 15.10.2011, lodged against accused persons which includes son of the present complainant also. This shows that this petitioner in the capacity of a



police officer had gone to the village of the complainant to apprehend his wanted son in another case, i.e., Turkauliya P.S. Case No.395 of 2011. The petitioner succeeded in apprehending Sabbir Ahmad but his family members and others forcibly succeeded in releasing him from the police custody and just after lapse of two days this complaint was filed by mother. The petitioner is undoubtedly a public servant. No sanction from the government has been obtained for launching prosecution against him. The present complaint filed by complainant-mother of the accused Sabbir appears malicious in nature, therefore, continuation of the present proceeding against the petitioner would be an abuse of the process of the Court, hence the order of cognizance dated 09.12.2011, passed by learned Chief Judicial Magistrate, Motihari in Complaint Case No.2434 of 2011 with respect to the petitioner including further criminal proceeding against him is set aside.

5. The quashing petition stands allowed.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
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