

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.37398 of 2014

Arising Out of PS.Case No. -2744 Year- 2013 Thana -SARAN COMPLAINT CASE District-
SARAN

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1. Mrigendra Kumar Sharma Son of Late Jitendra Narayan Sharma, Resident of Mohalla - Sadhnapuri, P.S. - Chapra Nagar, Principal, Shankar Dayal Singh Inter College, jalalpur Bazar, P.S. - Jalapur, District - Saran at Chapra.
 2. Banaras Singh Son of Late Raghunath Singh, Resident of Village - Noor Nagar, P.S. - Jalalpur, District - Chapra, At Present Working as Secretary, Shankar Dayal Singh Inter college, Jalalpur Bazar, P.S. - Jalalpur, District - Chapra.

.... Petitioner/s

Versus

1. The State of Bihar
2. Prof. Kamal Kishore Singh Son of Late Chandrika Prasad Singh, Resident of Village & P.O. - Shamkauria, P.S. - Ishuapur, District - Saran at Present Lecturer, Shankar Dayal Singh Inter College, Jalapur Bazar, P.S. - Jalapur, District - Saran at Chapra.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Yugal Kishore, Sr. Adv.
Mr. Sanjay Kumar, Adv.
Mr. Ugranath Mallik, Adv.
Mr. Laliteshwari, Adv.
For the Opposite Party/s : Mr. Bharat Bhushan, APP
For the Opposite Party No.2 : None.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 15-09-2017

Heard Shri Yugal Kishore, the learned Senior counsel for the petitioners, assisted by Shri Sanjay Kumar, Adv. and Shri Bharat Bhushan, the learned APP for the State.

2. The petitioners have challenged the order dated 15.04.2014 passed by the learned Judicial Magistrate, 1st Class, Chapra in Complaint Case No. 2744 of 2013 (Trial No. 404 of 2014) whereby and whereunder cognizance has been taken against the



accused persons including the petitioners herein for the offences punishable under Sections 471, 420/34 of the Indian Penal Code.

3. The short facts of the case are that the Opposite Party No.2, namely, Prof. Kamal Kishore Singh, filed a Complaint Case No. 2744 of 2013 dated 3.9.2013 against the accused persons i.e. the petitioners herein inter alia alleging therein that the Opposite Party No.2 was working as lecturer in Shankar Dayal Singh Inter College, Jalapur Bazar in Hindi subject since 20.12.1987. On 31.07.2013, the Principal- petitioner No.1 had misbehaved with one female employee of the said college and a case was registered against him in which the Opposite Party No.2 is one of the witnesses. Subsequently, the accused persons i.e. the petitioners herein had filed Anticipatory Bail Petition No. 1664 of 2013 before the court of learned Sessions Judge, Saran at Chapra in the aforesaid case annexing a document purportedly a resignation letter of the Opposite Party No.2, on the basis whereof the petitioner no.1 had terminated the services of O.P. No.2. The further case of the Opposite Party No.2 is that the said document, which is said to be his resignation letter dated 05.05.2010 and is said to have been accepted on 05.05.2010 itself, is forged and fabricated. On the basis of the said allegation, Complaint Case No.2744 of 2013 was filed by the Opposite Party No.2.



4. The learned Judicial Magistrate, Ist Class, Chapra at Saran vide an order dated 15.04.2014 has issued summons against the petitioners herein under Section 471, 420/ 34 of the Indian Penal Code.

5. The aforesaid order dated 15.04.2014 is under challenge before this Court in the present case.

6. This Court had earlier issued notice to the Opposite Party No.2 vide order dated 14.10.2014 and subsequently by an order dated 06.07.2015, the notice was validly treated to have been served upon the Opposite Party No.2. Despite valid service of notice, the Opposite Party No.2 has chosen not to appear before this Court for the reasons best known to him.

7. The learned Senior Counsel appearing for the petitioners has stated that the Opposite Party No.2 had resigned by a letter dated 5.5.2010 whereafter the resignation was accepted on the same day hence in an incident of the year 2013, he cannot be a witness to the alleged incident of misbehaviour with a fellow teacher. In fact, the Principal of the College by letter dated 11.04.2011 had written to the Superintendent of Ram Dayal Singh College, Muzaffarpur regarding acceptance of resignation of the Opposite Party No.2 on 5.5.2010. It is further brought to my notice that the Principal, by a letter dated 5.7.2012, written to the Secretary, Bihar



School Examination Board, Patna, had informed that in the meeting of the Governing Body held on 25.3.2011, a decision has been taken to terminate the services of those teaching and non-teaching employees who were absent for a period of one year. It had been further stated in that letter that the Opposite Party No.2 had already submitted his resignation letter.

8. The learned Senior counsel has further brought to my attention a complaint dated 9.7.2012 written by one Sunil Singh, Donor Member of the aforesaid College, wherein he has stated that an Ex-Lecturer namely, Kamal Kishore Singh i.e. Opposite Party No.2 had arrived at the College at about 10.40 A.M. with unsocial elements and engaged in assault upon the various employees of the college as well as had also engaged in destroying the properties of the said college, apart from other allegations made in the said complaint petition. On the basis of the said complaint, Jalalpur P.S. Case No. 84 of 2012 dated 10.07.2012 was registered under Sections 147, 149, 427, 379 and 504 of the Indian Penal Code. It is stated that the police had submitted final form in the said case, however, since the complainant/ informant herein had filed a protest petition prior to submission of the final form, hence the learned trial court has not accepted the final form till date. This position can be derived from paragraph-3 of the second supplementary affidavit dated 5.9.2017



filed in the present case.

9. The learned Senior counsel submits that it would be apparent from the aforesaid facts and circumstances that firstly the entire prosecution is malicious inasmuch as the Opposite Party No.2 is trying to wriggle out of the situation created by him. Secondly, it is submitted that at best, the present case can be said to be a civil dispute for which the petitioners are free to agitate before the appropriate court. In such view of the matter, it is submitted that the allegations levelled in the complaint petition do not disclose commission of any cognizable offence so as to warrant continuance of criminal proceedings. It is further submitted that the present proceeding is malicious in nature and there is ample material on record to show that the Opposite Party No.2 had resigned on 5.5.2010 and thereafter, the said resignation was accepted as well as subsequently, the authority of the Government Department has also accepted the same. In such view of the matter, it cannot be said that the resignation letter was a forged document. Lastly, it is submitted that if the opposite party no.2 wants to challenge the termination of his services, he has remedy by way of taking recourse to appropriate civil action, however the present criminal case cannot be used as an instrument for redressal of his civil dispute.

10. I find from the facts and circumstances stated



herein above as also upon perusal of the materials on record that the present prosecution is malicious and launched at the behest of Opposite Party No.2 with a view to somehow re-enter in the college by way of gaining employment, which was terminated in the year 2010. In any view of the matter, the nature of allegations are merely of a civil nature and do not warrant continuance of criminal proceeding.

11. For the reasons stated herein above, the order dated 15.04.2014 passed by the learned Judicial Magistrate, 1st Class, Chapra in Complaint Case No. 2744 of 2013 is hereby set aside. The petition is allowed.

12. There shall be no order as to costs.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	22-09-2017
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