

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.35751 of 2014

Arising Out of PS.Case No. -1063 Year- 2013 Thana -PATNA COMPLAINT CASE District-
PATNA

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Umesh Kumar S/o Lal Chand Prasad Yadav, Officer In-charge of Gopalpur Police
Station, P.S.- Gopalpur, Distt.- Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Devendra Prasad Singh S/o Late Ram Nagina Singh, resident of village - Chipura
Kurd, P.S.- Gaurichak, Distt.- Patna at present Surpunch Chipura Panchayat,
Sampatchak, Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Vijay Kumar Sinha, Advocate
For the Opposite Party No. 2 : M/s Sanjay Kumar Verma and
Bijay Bihari Sinha, Advocates
For the State : Mr. Akhileshwar Dayal, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 09-08-2017

Heard Mr. Vijay Kumar Sinha, learned counsel for the
petitioner, Mr. Sanjay Kumar Verma as well as Bijay Bihari Sinha,
learned counsel appearing on behalf of opposite party no. 2 and Mr.
Akhileshwar Dayal, learned counsel representing the State.

2. This criminal application under section 482 of the
Criminal Procedure Code, has been filed to quash the order dated
21.01.2014 passed by learned Judicial Magistrate 1st class, Patna in
Complaint Case No. 1063(c)/2013, whereby and whereunder the
learned Magistrate, finding *prima facie* case for the offences under
sections 341, 323, 504 and 379 of the Indian Penal Code, ordered for
issuance of summons against the petitioner.



3. The fact, in brief giving rise to this criminal miscellaneous application, is that the opposite party no. 2 filed a complaint case on the file of learned Chief Judicial Magistrate alleging *inter alia* that this petitioner, being S.H.O. of Gopalpur Police Station, has not recorded the statement of one of the victim Baby Kumari of Gopalganj P.S. Case No. 14 of 2013 dated 27.02.2013. The victim had suffered fire arms injury which is attributed to the accused Rajesh Ravidas and she was admitted at Jeevan Deep Hospital and even after recovery from her ailment, she contacted this petitioner for recording of her statement. Opposite party no. 2 on the day of occurrence along with the victim baby Kumari and other family members, visited at the place of this petitioner and requested him to record her statement, but he did not record the same and abused and also assaulted him by *lathi*. In the said case, the complainant and his witnesses supported the allegation of assault, wrongful confinement, abuse, snatching and hurling threat against the accused. The learned Judicial Magistrate took cognizance and summoned the petitioner.

4. It has been submitted that the Court below has not appreciated the evidence judiciously, rather passed the impugned order arbitrarily without applying judicial mind. This petitioner was not the Investigating Officer of Gopalpur P.S. Case No. 14 of 2013 registered for the offences under sections 341, 323, 307 of the Indian



Penal Code and section 25 (1-b), A/26/27 of the Arms Act. This case was registered on the fard-beyan of one Upendra Ravidas. The said fard-beyan was recorded by the Sub-Inspector, Kumar Gaurav on the same day against Rajesh Ravidas. The matter was investigated by the said Sub-Inspector Kumar Gaurav. This petitioner was S.H.O. on the relevant date and so, there was no occasion either for the complainant or any person to approach this petitioner for recording the statement of the victim Baby Kumari of Gopalpur P.S. Case No. 14 of 2013. The sole accused, Rajesh Ravidas was caught by villagers along with fire arms and they had assaulted him brutally. The accused in course of treatment, died and Gopalpur P.S. Case No. 15 of 2013 was registered for offence under section 302 and other sections of the Indian Penal Code. The said Gopalpur P.S. Case No. 15 of 2013, was also investigated by the same Investigating Officer, Kumar Gaurav, wherein he submitted charge sheet against four persons on 16.08.2013. It has also been submitted that the petitioner is a Government servant and for his prosecution, no sanction under section 197 of the Criminal Procedure Code has been taken and the order taking cognizance is against material on record and so, the same is fit to be quashed.

5. The learned Additional Public Prosecutor, on the other hand, opposed the submission.

6. On perusal of the complaint petition and



Annexures on record, I find that a Police case, vide Gopalpur P.S. Case No. 14 of 2013, was registered against four persons. In the said occurrence, the victim Baby Kumari sustained fire arms injury caused by informant of Gopalpur P.S. Case No. 14 of 2013. The accused, Rajesh Ravidas was apprehended by villagers, who thrashed him and in course of treatment, he succumbed to the injury. The complainant allegedly approached this petitioner to get the statement of victim Baby Kumari recorded under section 164 of the Criminal Procedure Code. The Investigating Officer of this case was Kumar Gaurav. I find that there are contradiction in the statement of complainant and his witnesses on the point of snatching money from his possession. Besides that, the petitioner is admittedly a Police Officer and for his prosecution, a sanction is required under section 197 of the Criminal Procedure Code and so, cognizance order on this count is also not sustainable. The prosecution of this petitioner, in such circumstances, appears to be an abuse of process of Court.

7. In view of the discussion made above, the order dated 21.01.2014 taking cognizance against the petitioner is hereby quashed and this criminal miscellaneous application is allowed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
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