

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.35768 of 2014

Arising Out of PS.Case No. -36 Year- 2011 Thana -SIWAN CITY District- SIWAN

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Sandeep Kumar Son of Shri Kedar Nath Singh, Resident of village- Amlori, Police Station- Siwan Muffasil, District- Siwan.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Prakash Kumar, Advocate, son of Sri Jaagat Narayan Sharma, resident of village-Nai Basti Mahadeva, P.S.-Siwan, District-Siwan.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Adv.

For the Opposite Party/s : Mrs. Madhuri Lata, Adv.

For the State : Mr. Humayu Ahmad Khan, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 24-08-2017

Heard learned counsel for the petitioner, learned counsel for the opposite party no. 2 and the Additional Public Prosecutor for the State.

This criminal miscellaneous application under section 482 of the Code of Criminal Procedure, has been filed to quash the order dated 24.01.2012 passed by the learned Chief Judicial Magistrate, Siwan in Siwan Town Police Station Case No. 36 of 2011. The learned Court below, as per impugned order, took cognizance of offence under section 504 of the Indian Penal Code against the petitioner.

It has been submitted that the petitioner was Cashier in



Canara Bank where the informant (opposite party no. 2) came for depositing money. In course of business transaction of the Bank, verbal duel took place between the petitioner and the opposite party no. 2 for depositing money. The opposite party no. 2 abused and hurled threat to implicate the petitioner in some case. The informant thereafter lodged the aforesaid case for offences under sections 341, 323, 379 and 504 of the Indian Penal Code. The matter was investigated and Police found the case of snatching Rs. 5,000/- and assault untrue and accordingly, submitted charge sheet for the offence under section 504 of the Indian Penal Code. The learned Magistrate, took cognizance against the petitioner. The informant (opposite party no. 2) being aggrieved for not taking cognizance under sections 323 and 379 of the Indian Penal Code, filed Criminal Revision No. 96 of 2012, which after hearing, was dismissed.

The learned counsel for the petitioner further submits that there is absolutely no ingredient of constituting offence under section 504 of the Indian Penal Code. The petitioner neither uttered any word nor gave provocation to the informant, intending or knowing it to be likely that such provocation would cause him to break the public peace. The learned Court below has passed the impugned order in mechanical manner and so, the impugned order is fit to be quashed.

The learned counsel for the opposite party no. 2 as well as



Additional Public Prosecutor opposed the submission.

On perusal of FIR, impugned order and the case diary, I find that the informant has simply alleged that on the day of occurrence, this petitioner assaulted the informant by a bench and snatched Rs. 5,000/- and a golden chain from his possession. On perusal of the case diary I find that the Investigating Officer recorded the statement of as many as seventeen witnesses. They are either the Bank employees, consumers of the Bank or persons, who were present at the place of occurrence and saw the occurrence. All the witnesses have stated that it was the informant (O.P. No. 2), who abused the petitioner, who was acting as Cashier of the Bank. It appears that the learned Magistrate without perusing the case diary, has passed the order taking cognizance under section 504 of the Indian Penal Code against the petitioner in mechanical manner. The order taking cognizance under section 504 of the Indian Penal Code is not sustainable in view of materials on record and so prosecution of this petitioner on the basis of the said order, would amount to abuse of process of Court.

In view of the above facts, the impugned order dated 24.01.2012 taking cognizance under section 504 of the Indian Penal Code against the petitioner and his prosecution on that basis is hereby quashed.



Accordingly, this criminal miscellaneous application is
allowed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	04.09.2017
Transmission Date	04.09.2017

