

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.30129 of 2014

Arising Out of Complaint Case No. -2 Year- 2012 Thana -Majhawalia District- WEST CHAMPARAN,
(BETTIAH)

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Sudhir Kumar Mishra (T.T.E.) S/o Late Shrikant Mishra, resident of village-
Barwa, P.S.- Majhawalia, District- West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Nipu Kumar Upadhyay S/o Sri Madhusudan Upadhyay, resident of village-
Jaimngalapur, P.S- Shikarpur, District West Champaran.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bimlesh Kr. Pandey, Adv.
For the Opposite Party No. 2 : Mr. Sachidanand Rai, Adv.
For the State : Mr. Ganesh Prasad Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 25-08-2017

Heard Mr. Bimlesh Kumar Pandey, learned counsel for the
petitioner, Mr. Sachidanand Rai, learned counsel appearing on behalf of
the opposite party no. 2 and Mr. Ganesh Prasad Singh, learned
Additional Public Prosecutor representing the State.

This criminal miscellaneous application under section 482
of the Code of Criminal Procedure has been filed to quash the order
dated 15.02.2014 passed by the learned Railway Magistrate, Bettiah,
West Champaran in Complaint Case No. 02 of 2012 whereby and
whereunder the learned Magistrate finding *prima facie* case for the
offence under section 504 of the Indian Penal Code, summoned the
petitioner.



This petitioner is Train Ticket Examiner in Railway and allegation is that on 30.07.2012 at about 8.40 A.M., he allegedly abused and assaulted the complainant (O.P. No. 2), as he did not pay an amount of Rs.2,000/- as fine. The petitioner allegedly obtained signature of the complainant on some papers and realized Rs. 973/- in cash.

The learned counsel for the petitioner submits that the complainant is an Advocate's Clerk practicing at Civil Court, Bettiah. and he was caught travelling without any ticket. He was apprehended by this petitioner with the help of Police during ticket checking. The complainant was produced before the Railway Magistrate where he confessed his guilt for travelling without ticket and deposited a fine of Rs.973/-. The statement was recorded by the learned Magistrate. The petitioner has annexed the copy of Railway Police Station Case No.1463 of 2012 and the order of the learned Railway Magistrate wherein the complainant deposited a fine of Rs.973/- and thereafter, he was released from the custody. The complainant has filed the complaint case out of vengeance. The learned Railway Magistrate has passed the impugned order in mechanical manner without considering these facts and so, the impugned order taking cognizance 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 complaint petition, impugned order and annexures on record, I find that the opposite party no. 2 was



apprehended by this petitioner, for which, Railway Police Station Case No. 1463 of 2012 was registered. The complainant was produced before the learned Magistrate on the same day, i.e. on 30.07.2012 where he confessed his guilt and deposited a fine of Rs.973/-, vide Receipt bearing no.741735 dated 30.07.2012 and thereafter, he was released from the custody. The learned counsel has annexed the copy of statement of the opposite party no. 2, which was recorded in course of summary trial, and also the copy of charge sheet. The opposite party no. 2 has filed the complaint case with respect to the said offence, which occurred on 30.07.2012. The complaint case has been filed after delay of 16 days, i.e. on 16.08.2012, which shows that the complainant suppressing all these facts, has filed the complaint case out of vengeance, which is not sustainable. The prosecution of this petitioner under such circumstance would amount to abuse of process of Court.

In view of above facts. the order dated 15.02.2014 taking cognizance as well as criminal prosecution of the petitioner on the basis of said order is hereby quashed and 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

