

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.4738 of 2014

Arising Out of Case No. -63 Year- 2012 Thana -MUZFFARPUR COMPLAINT CASE District-
MUZAFFARPUR

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Jagjit Singh @ Lakki Bhatiya, S/O Mohan Singh Bhatiya, R/O Mohalla-
Gurudwara Campus, Ramna, P.S.- Mithanpura, District- Muzaffarpur

.... Petitioner/s

Versus

1. The State Of Bihar
2. Sudhir Poddar, son of Shri Umesh Poddar, resident of Poddar Complex, Club
road, Ramna, P.S.- Mithanura, District- Muzaffarpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Kanhaiya Prasad Singh, Sr. Advocate.
Mr. S.K.Lal, Advocate.

For the Opposite Party/s : Mr. Y.V.Giri, Sr. Advocate.
Mr. Akash Giri, Advocate.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 28-11-2017

Heard learned counsel for the petitioner and learned
counsel for the State as well as learned counsel for the O.P. No. 2.

2. Petitioners seek quashing of order dated 27.11.2013
passed by learned Sessions Judge, Muzaffarpur in Cr. Revision No. 95
of 2013, whereby dismissing the revision application affirmed order
dated 22.03.2013 passed in Complaint Case No. 63 of 2012
subsequently by filing a supplementary affidavit, he has also
challenged the entire criminal proceeding of Complaint Case No. 63
of 2012 pending in the court of learned Chief Judicial Magistrate,
Muzaffarpur as well as order taking cognizance dated 19.10.2012
under Sections 182 and 211 of the Indian Penal Code.



3. A brief fact giving rise to the case is that petitioner and the accused both are brother-in-laws, as the sister of the petitioner is married to O.P. No. 2. The petitioner lodged Mithanpura P.S. Case No. 335 of 2011 under Section 307 of the Indian Penal Code and Section 27 of the Arms Act, against Sudhir Poddar, O.P. No. 2. It is alleged in the written information that on 22.12.2011 in the evening the informant (petitioner herein), after closing his shop, reached his home by scooter and was parking it in front of his house, in the meanwhile, he heard some sound and some foreign particles pierced his jacket on his arms, he turned around but could not notice anybody. He fell down, called for help to his relatives, his hand got scratched and feeling burning sensation. He raised suspicion against his brother-in-law (O.P. No. 2) because in the morning, he had threatened him. However, the police, on completion of investigation, found the allegation false and recommended for prosecuting the informant (petitioner herein) for giving false information to the police with intention to cause injury to the accused and making false charge with same intention so recommended for instituting prosecution under Sections 182 and 211 of I.P.C and the complaint bearing Complaint Case No. 63 of 2012, was filed by Mr. Suresh Mishra, Assistant Sub Inspector, Mithanpura Police Station against the petitioner (informant).



4. It is also important to mention here that earlier this matter was heard in absence of the O.P. No. 2 and criminal proceeding was set aside, but as the order was passed in absence of O.P.No. 2, so he moved before the Apex Court and thereafter this matter was remanded back for re-hearing.

5. Learned counsel appearing on behalf of the petitioner submits that petitioner in his written information has clearly stated that he not saw anyone firing upon him, rather only raised suspicion against his brother-in-law/O.P. No. 2 for the reason that in the day hours, he had threatened him on mobile though the police instituted a case against him. Learned counsel assails the cognizance order taken by the court for reason that in the present case, the complaint was filed by A.S.I. of Mithanpura P.S., on the basis of which Mithanpura P.S.Case No. 335 of 2011 has been instituted.

6. Learned counsel submits that according to Section 195(1)(a) Cr.P.C., a complaint is to be filed only in writing by the concerned public servant to whom false information was given or by some other public servant to whom he is administratively subordinate, means the superior police officer to S.H.O. However, in the present case, a subordinate to the S.H.O has filed the complaint. He places reliance to the case of *Daulat Ram vs. State of Punjab* reported in *AIR 1962 SC 1206*. The Hon'ble Supreme Court has held that



complaint has to be filed in writing by the public servant concerned and that no court shall take cognizance except on such a complaint, clearly shows that in every instance the court must be moved by the appropriate public servant. He further elucidates elaborating facts of the case. Patwari sent a letter to Tehsildar informing he was beaten and robbed by two persons named in the letter. Tehsildar forwarded the letter to the Sub Divisional Officer; who sent it to the police. The police enquired into the fact and reported that allegation levelled in the letter was false and launched prosecution under Section 182 of I.P.C. Patwari was put on trial and found guilty and was sentenced. Patwari filed appeal before the Apex Court and it is held that complaint in writing for launching prosecution should be made by the Tehsildar as the public servant concerned and not by S.H.O. who submitted charge sheet. So there is no compliance of Section 195 of Cr.P.C.

7. With regard to another offence under Section 211 of I.P.C., learned counsel submits that as per provision of Section 195 (1)(b) Cr.P.C., when such offence under Section 211 of I.P.C. is committed, in any proceeding in any court then only the court is empowered to file complaint in writing or by officer of the court authorized by the court in this behalf or by its superior court. However, in the present case, there was no any criminal proceeding



pending in the court because no notice was issued by any court for initiating any proceeding against the petitioner. It is submitted that in the case of ***Ganpatram Dinaram Agarwal v. Rambai*** reported in **1950 Cr. L.J 51**, Nagpur High Court has held that merely expressing suspicion as to complicity of the accused or statement to the police regarding suspicion of the particular person is not a charge within the meaning of Section 211 of I.P.C, so the entire criminal proceeding would be abuse of the process of law and requires to be set aside.

8. Contrary to that learned counsel appearing on behalf of the O.P. No. 2 submits that complaint was filed against the petitioner by the Assistant Sub-Inspector of Police on the direction received from the Superintendent of Police. Therefore, compliance of Section 195 Cr.P.C. has been done. He also places reliance on ***Ramdhan v. State of Uttar Pradesh*** reported in **(2012) 5 SCC 536** and submits that the provisions of Sections 195 and 340 Cr.P.C. are not attracted in the case of offences under Section 182 of the I.P.C. committed outside the court. He further places reliance on ***Central Bureau of Investigation vs. M. Sivamani*** reported in **2017 SCC OnLine SC 845**. In this case, complaint was lodged on the direction of the High Court and the Hon'ble Supreme Court observed that the expression "the public servant or his administrative superior" cannot exclude the High Court, and in the present case complaint was



instituted on the direction of the Superintendent of Police. Learned counsel also submits that now the evidence has also been adduced in the case moreover on earlier occasion had only challenged issuance of summons seeking setting aside the criminal proceeding, but no ground was taken in the earlier application.

9. Having considered rival submissions and on perusal of record, let us analyze the factual position of the case first. Petitioner lodged a case raising suspicion against O.P. No. 2 alleging that when he parked the scooter in front of his house in the night, heard some sound and some foreign particles pierced his jacket causing burning sensation and injury in his arm, but could not see anybody however raised suspicion against his brother-in-law, O.P. No. 2, as he had threatened him in the day hours on the same day. The police registered a case i.e., Mithanpura P.S. Case No. 335 of 2011 naming O.P. No. 2 as accused. However, the police, on conclusion of investigation, found the allegation false. It is fact that only suspicion was raised by the petitioner against his brother-in-law. In the case of ***Ganpatram Dinaram Agarwal*** (supra), there is observation of one decision of the Division Bench of the Allahabad High Court delivered in ***Emperor v. Kashiram***, 46 All 906 : (A.I.R. (11) 1924 All 779 25 Cr. L.J. 1239) which is as follows:

“If the complainant confines himself to reporting what he knows of the facts, stating his suspicions, and leaving the



matter to be further investigated by the police, or leaving the police to take such course as they think right in the performance of their duty, he may be making a report, but he is not making a charge. But if he takes the further step, without waiting for any official investigation, of definitely alleging his belief in the guilt of a specified person, and his desire that the specified person be proceeded against in Court, that act of his, whether verbal or written, if made to an officer of the law authorized to initiate proceedings based upon the complainant's statement, whether amounting to an expression of the complainant's belief in the guilt of the specified person, or his desire that Court proceedings be taken against him, amounts to making a charge."

10. So applying this principle in the backdrop of the present case, the petitioner only raised suspicion against O.P. No. 2 not making definite allegation so the matter was to be investigated by the police. So reporting of facts by the petitioner as known to him and stating his suspicion does not come in the realm of making a charge to initiate a criminal proceeding in the court. So *prima facie* offence under Section 211 of I.P.C. is not attracted.

11. In view of Section 195 of Cr.P.C., no court can taken cognizance of any offence punishable under Sections 172 to 188 of I.P.C. unless the complaint is filed in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate or in other words by superior officer of the public servant concerned to whom false information was reported.



Provision of Section 195(1) of Cr.P.C. does not make any distinction between the offence committed outside the court or within the court. The Supreme Court in the case of ***Daulat Ram*** (supra) has held that unless a complaint in writing is made by a public servant concerned or by his superior officer, to whom he is subordinate, in that case even if the trial proceeded and concluded that trial was without jurisdiction *ab initio* and conviction cannot be maintained. This judgment has not been considered in any other subsequent judgment as referred by learned counsel for the O.P. No. 2. The Court is of the view that compliance of the provisions of Section 195(1)(a) of the Cr.P.C. has not been done in the present case as complaint for prosecution under Sections 182 and 211 of I.P.C. was filed by Assistant Sub Inspector, who is admittedly subordinate to S.H.O., to whom the information was given by the petitioner. Merely filing the complaint by the Assistant Sub Inspector on the direction of the Superintendent of Police does not empower him to transgress the statutory provisions. Hence in the present matter, cognizance taken by the court is without jurisdiction, as the complaint was not filed by the S.H.O. or by any other officer to whom he is subordinate in other words by any superior officer of the S.H.O. Therefore, in the backdrop of the facts of the case and discussions made above, continuation of the criminal proceeding would be an abuse of the process of the court.



Accordingly, cognizance order dated 19.10.2012 and subsequent criminal proceeding of Complaint Case No. 63 of 2012 pending in the court of learned Chief Judicial Magistrate, Muzaffarpur is hereby set aside.

12. The application stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.12.2017
Transmission Date	22.12.2017

