

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.35899 of 2011

- =====
1. Madan Pal, son of Sri Pirthvi Pal, resident of A/344, Awas Vikas Colony, District- Unnav (U.P.) at present working as Assistant Commissioner, Jawahar Navoday Vidyalaya Samiti, Regional Office Boring Road, Patna
 2. Akhil Kumar Shukla, son of Sri Karuna Shankar Shukla, resident of 1/143 Gari Khana District- Fatehgarh U.P. at present posted as Deputy Commissioner, Navodaya Vidyalaya Samiti Regional Office Boring Road, Patna.

.... Petitioners

Versus

1. The State of Bihar
2. Manoj Kumar, son of Sri Mahendra Prasad Singh, resident of House No. 23, Road No. 8, Sri Krishna Nagar, Patna.

.... Opposite Parties

=====

Appearance :

For the Petitioners : Mr. Surendra Kishore Thakur, Advocate
For the Opposite Parties : Mr. Kanhiya Kishore (APP)

=====

CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL ORDER

7 14-09-2017 The instant criminal miscellaneous has been filed for quashing the order dated 26.05.2011 passed by Sri Sunil Kumar, Judicial Magistrate, 2nd Class, Patna in Complaint Case No. (C) 3416 of 2010 whereby and whereunder prima facie offence was found to be made out under Section 341, 323 and 504 of the Indian Penal Code against the petitioners and accordingly they have been ordered to be summoned.

Manoj Kumar the opposite party no.2 has filed a Complaint Case No. 3416 of 2010 in the court of learned Chief Judicial Magistrate, Patna, alleging there in that he is an employee of Jawahar Navoday Vidyalaya Samiti Bikram, and is posted as



Science Teacher, Bikram, he has become victim of the conspiracy of their higher officials and has been suspended by the accused persons, for that he has already filed a case in the Central Administrative Tribunal, Patna, which is still pending. The accused persons are employee of the Jawahar Navoday Vidyalaya and posted as Deputy Commissioner and Assistant Commissioner in the Regional Office. On 19.12.2010 at about 7 p.m. all the accused persons in collusion with arrived at the house of the complainant at his residence from a Balero and was called by the accused no.2 wherupon as soon as the complainant came, the accused no.1 Akhil Kumar Shukla, caught the collar of the complainant, started abusing and forcibly took signature on few blank papers, they also caused threats to withdraw the case otherwise he will be killed. The unknown persons were pointing out pistol thereafter the complainant raising alarm whereupon the witnesses arrived there who have seen the occurrence. Threat was given that just he has been suspended and if he will not withdraw the case, he will be removed from the service. The complainant filed an application before the concerned P.S. but due to high handedness of the accused persons the police has not taken any steps and, as such, the complaint petition was filed, the said complaint was transferred to the Court Sri Sunil Kumar, Judicial



Magistrate, 2nd Class for enquiry under Section 192 of the Cr.P.C. who after making enquiry and recording the witnesses of enquiry witnesses passed the impugned order dated 26.05.2011. The petitioners being aggrieved and dissatisfied with the said order have preferred this criminal miscellaneous challenging the legality, correctness and propriety of the same.

The learned counsel for the petitioners arguing in the case has submitted that the complaint case is out and out false and fabricated case, no such occurrence has taken place, the petitioner no.1 is an Assistant Commissioner whereas the petitioner no.2 is the Deputy Commissioner in Jawahar Navoday Vidyalaya Samiti , Regional Office and it is not expected that they will commit such an offence. The prosecution story appears quite improbable and unreliable. As a matter of fact, the complainant has committed forgery, there was several charges against him. The petitioner has directed the Principal of the School to lodge F.I.R. against the complainant and thereafter the complainant to mount pressure lodged this complaint case. The petitioners are controlling officer of the opposite party no.2. Memo of charge was issued against the opposite party no2 for departmental proceeding and for that the opposite party no.2 was very much aggressive against the petitioners. The petitioner no.2 in fact was on leave on 19.12.2010



and on the same date he has returned and, as such, no reliance can be placed on the allegation made in the complaint petition (vide Annexure-7).

The opposite party no.2 has been transferred from Jawahar Navoday Vidyalaya Samiti Bikram to Jawahar Navoday Vidyalaya Samiti Chhindwara (Madhay Pradesh) and has jointed the post.

The learned Magistrate without considering all these facts has passed the impugned order and, as such, the same is fit to be set aside.

No one is present on behalf of opposite party no.2. The learned A.P.P. submits that the learned Magistrate after perusal of the record and considering the complaint petition, the statement of the complainant on solemn affirmation and the statement of enquiry witnesses has passed the impugned order which is quit proper, legal and correct and there is no need of any interference by this Court. At the stage of taking cognizance the defence of the accused persons cannot be looked into and the points raised here cannot be adjudged at that stage.

Having considered the submissions urged at the Bar, after going through the record and finding that the learned Magistrate after considering the materials available on the record



collected during enquiry has passed the impugned order, at that stage the defence of the accused person cannot be looked into because those facts were not available before the learned Magistrate at the time of passing the impugned order. The points raised by the petitioners can well be adjudged at proper stage and not at the stage of taking cognizance. The learned Magistrate has applied his judicial mind in considering the statement of the complainant and the statement of enquiry witnesses and after considering those materials collected during enquiry has passed the impugned order which appears quite proper, legal and correct and there is no need of any interference by this Court.

In the result, finding no merit in this criminal miscellaneous the same is hereby dismissed.

The petitioners are at liberty to raise the points which has been raised here at the proper stage.

(Jitendra Mohan Sharma, J.)

Rajiv/-

U		T	
---	--	---	--

