

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.48495 of 2013

Arising Out of PS.Case No. -818 Year- 2012 Thana -PATNA COMPLAINT CASE District-
PATNA

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Sunil Kumar Goyal, S/o Sri Sagar Mal Goyal, Posted As Senior Divisional
Accounts Officer, Road Division, Road Construction Department, P.S.-
Shekhpura, Distt.- Shekhpura

.... Petitioner

Versus

1. The State of Bihar.
2. Anirudh Kumar Das, S/o Late Rambahadur Das, Resident Of Mohalla-
Dariyapur, Birla Mandir Road, Shah Rasidullah Lane, P.O.- Bakipur,
P.S.- Pirbahor, Distt.- Patna

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Anupa Nand Jha, Advocate
For the Opposite Parties : Mr. Sadanand Paswan (APP)

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL ORDER

7 03-07-2017 This Criminal Miscellaneous has been filed for

quashing the order dated 21.03.2013 passed by Sri Ram Sujan
Pandey, Judicial Magistrate 1st Class, Patna City, Patna in
Complaint Case No. 818 of 2012 (Anirudh Kumar Das Vs.
Sunil Kumar Goyal & Others) whereby and whereunder, the
petitioner and other accused were summoned to face trial under
Sections 323, 504 of the I.P.C. and also for quashing the entire
criminal prosecution connected therewith.

Heard the learned counsel for the petitioner, the
learned A.P.P. and the learned counsel for the opposite party
no.2.



The opposite party no.2 filed a complaint case under sections 323, 341, 504/34 of the Indian Penal Code and under Section 3(x) SC/ST Act, in the Court of learned A.C.J.M., Patna City, against the petitioner who is working as Senior Divisional Accounts Officer, Road Division, Road Construction Department, Shekhpura and other accused persons, namely, Sri Vishwanath Pandey the then Accounts Clerk, posted at Ganga Bridge Project Division, Gulzarbagh, Ashok Kumar Singh, the then Treasure Guard, posted at Ganga Bridge Project Division, Gulzarbagh, Patna. The said complaint case was transferred to the Court of Sri Ram Sujan Pandey, Judicial Magistrate, 1st Class, Patna, who examined the complainant on solemn affirmation and after examining two inquiry witnesses, namely, Mithilesh Kumar and Md. Shakil Ahmad passed the impugned order.

As per the allegation made in the complaint petition all the accused persons called the complainant on 11.12.2010 at 4:00 p.m. and told "*Sala Chamar Meri Bat Nahi Manta Hai*", then the complainant asked the accused not to abuse him, then the accused persons started assaulting him but in the meantime, Shakil Ahmad and Mithilesh Kumar Singh reached there and intervened into the matter and saved the complainant, they



caused threats that if they approached the police then they would destroy him. The complainant went to SC/ST police station and submitted his written application, but after registering his written application bearing no. 338 of 2010 he was told to come later and no action was taken against the accused persons, then on 13.12.2010 the complainant submitted a written application before the Executive Engineer, Ganga Bridge Project Division, Gulzarbagh for taking action against the accused persons and a copy was also forwarded to the Road Construction Minister, Secretary, Road Construction Department, and the Chief Engineer Ganga Bridge Project Division, Gulzarbagh, Patna, Accountant General, Bihar Patna and the Deputy Secretary (Vigilance), Road Construction Department, Patna, but no action had been taken and then a written complaint was filed before the S.P. (Special) Sachiwalay, Patna and a copy of complaint was also forwarded to the Chief Minister and other concerned, but no action was taken and then Criminal Writ petition bearing No. 720 of 2011 was filed by the complainant in this Court which was disposed of with observation that if the F.I.R. was not registered and investigation is not taken up, the person aggrieved can file a complaint under Section 190 read with Section 200 of the Code



before the Magistrate concerned, who either inquire into the complaint himself or direct the police to investigate the case in terms of Section 156 (3) Cr.P.C. and thus the instant complaint petition was filed.

On behalf of the petitioner it is submitted that the petitioner was posted as Senior Divisional Accounts Officer at Ganga Bridge Project Division, Gulzarbagh, Patna and the complainant was posted there on the post of Daftari/Peon at Ganga Bridge Project Division, Gulzarbagh Patna. On 11.12.2010 at 3:p.m. the complainant in an intoxicating condition entered into the chamber of the petitioner and told him for making bill of his arrear of salary in one installment instead of five installments and also threatened the petitioner not to deduct G.P.F. from the arrears of revised pay scale. The illegal demand of the complainant was not entertained by the petitioner and other accused persons and then the complainant started shouting and abused the petitioner and other accused persons, namely, Viswanath Pandey and Ashok Kumar Singh, who were also posted there on the post of Accounts Clerk and Treasure Guard and the complainant threatened to implicate them under S.C./S.T. Atrocities Act. The matte was reported to the then Executive Engineer, Ganga Bridge Project Division,



Gulzarbagh, Patna for taking action against the opposite party no.2 vide Annexure- '3' series. The executive Engineer enquired the matter and found the allegations against the opposite party no.2 true and correct and on 13.12.2010 the Executive Engineer lodged Sanaha before the Officer-in-charge Alamganj, Police Station against the opposite party no.2 for his alleged illegal act. The Executive Engineer sent letter nos. 1136 & 1137 dated 15.12.2010 to the Officer-in-charge S.C./S.T. Police Station and the S.P. (S.C./S.T.) Patna at that point of time for earlier inquiry against the opposite party no.2 vide Annexure- '5' series. The Executive Engineer also issued a show cause to the opposite party no.2 for his alleged misconduct with the official staffs, vide Annexure-'6' series. The Executive Engineer found him guilty of his misconduct and recommended for the departmental proceeding against him vide Annexure-'7'. The police had also investigated the matter on the basis of complaint petition of opposite party no.2 but all the allegations made in the complaint petition were found false including the statement of the inquiry witnesses also. The Executive Engineer has taken action against the opposite party No.2 regarding misbehaviour and conduct. The inquiry witness no.2 has caused threats to the petitioner also to the Executive



Engineer therefore he has filed F.I.R. against the inquiry witness no.2 Md. Shakil Ahmad. The learned Magistrate without considering the material available has passed the impugned order in mechanical manner and, as such, the same is fit to be quashed.

The learned counsel for the petitioner has relied upon the decision reported in *2012 (3) PLJR page 91*, in the case of *Dr. Ashok Kumar Jha & Anr. Vs. The State of Bihar & Anr.* and *2013 (2) PLJR page 571* in the case of *Chandra Shekhar Jha Vs. the State of Bihar & Anr.*

The learned A.P.P. and learned counsel for the opposite party no.2, on the other hand, submit that at the time of taking cognizance the learned Magistrate is required only to see as to whether on the basis of material collected during inquiry, prima facie offence is made out or not. All these facts stated by the learned counsel for the petitioner were not available before the learned Magistrate at the time of passing the impugned order. From the statement of the complainant on solemn affirmation and from the statement of inquiry witnesses nos. 1 & 2, it has been found to make out prima facie case against the accused persons under Sections 323 & 504 of the I.P.C. and therefore there is no need for any interference by this Court.



The facts of the rulings cited by the learned counsel for the petitioner is quite on the different footing then the present case. Here in the present case the complainant has approached up to this court for registering his case and then on the basis of the observation made by this Court the complaint case was filed, so prima facie the offence under Section 323 and 504 has been made out.

Having considered the submissions urged at the Bar, going through the impugned order and the record, it is manifest that the complainant on the solemn affirmation has stated regarding the allegations as made out in the complaint petition and the inquiry witness no.1 Mithilesh Kumar and the inquiry witness no. 2 Md. Shakil Ahmad has supported the allegation that the complainant was assaulted and humiliated. The points taken by the learned counsel for the petitioner can well be adjudged at the later stage and not at this stage.

The complainant earlier filed written complaint before the S.C./S.T. police station and when no action was taken, he approached several forums including this High Court and thereafter in the light of observation passed by this Court, complaint case was filed. The learned Magistrate after proper appreciation of the facts has passed the impugned order and



therefore there is no need of any interference by this Court. The two rulings cited above are not applicable in the present case at this stage. The facts of the present case are quite on different footing as here the complainant approached up to the High Court for registering his case.

In the result, finding no illegality, incorrectness or impropriety in the impugned order, the same is hereby confirmed and finding no merit in this criminal miscellaneous the same is hereby dismissed with a liberty to the petitioner to raise all these points at later stage in accordance with law.

(Jitendra Mohan Sharma, J.)

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