

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.28722 of 2012

Arising Out of PS.Case No. -248 Year- 2004 Thana -null District- KHAGARIA

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Kumar Ranvijay @ Anil Kumar S/O Sri Magan Lal Sah Resident Of Mohalla-
Laheria Bazar, P.S.- Dalsingsarai, District- Samastipur

.... Petitioner.

Versus

1. The State Of Bihar
2. Pankaj Kumar Prasad, S/o note known, Sub Inspector of RPF, R.P.F. P.s.
Bihpur, District Bhagalpur, Presently posted under Divisional Security
Commissioner, E.C. Railway, Hajipur.

.... Opposite Parties.

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Appearance :

For the Petitioner : Mr. Abhay Shankar Singh
Mr. Amit Kumar Mishra

For the Opposite Party : Mr. Siddhartha Prasad, Advocate.
Mr. Om Prakash Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 25-08-2017

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

2. This application has been filed for quashing the order
dated 09-04-2012 passed by learned Sub Divisional Judicial Magistrate,
Khagaria in G.R. No. 1657 of 2004 arising out of Parbatta P.S. Case
No. 248 of 2004 by which, the learned Magistrate has rejected the
petition filed u/S 239 of the Cr.P.C. by the petitioner.

3. It has been submitted on behalf of petitioner that no
occurrence as alleged in the FIR has taken place. The instant case has
been registered at the behest of In-charge, R.P.F. who is an accused in
Complaint Case No. 120/93 lodged by father of the petitioner while
he was posted as Inspector of RPF, Barauni, which is pending before



the learned Sub Divisional Judicial Magistrate, Dalsingsarai for the offences under Sections-379, 323, 504 & 147 of the Indian Penal Code. It has further been submitted that no offence u/S 384 of the Indian Penal Code is made out. Furthermore, there is allegation of mere apprehension of harm and threat in future and as such, material was not enough for framing charge. The petitioner was authorized purchaser having authority to receive the auctioned scrap.

4. The petitioner was issued notice to deposit Rs. 16,68,000/- in favour of the Railway which the petitioner had deposited and as such, the petitioner had the authority to receive the scraps as lawful purchaser. The final delivery was done in presence of three railway officers including Section Engineer and Ward keeper but none of them has lodged complaint against the petitioner during the whole process of handing over the scraps to the petitioner.

5. It is alleged in the written report that threat was given on 15-12-2004 and the case was lodged on 19-12-2004 with the forwarding of the R.P.F. Inspector Mr. S. N. Mishra. The written report was filed by Pankaj Kumar Prasad A.S.I. R.P.F. alleging therein that on 15-12-2004, he was present at Pasraha Railway Station for handing over railway materials to the purchaser as per administrative order. In course of handing over, the purchaser Kumar Ranvijay (petitioner) expressed his desire to have more quantity of rail material than allotted to the petitioner, which was strongly



protested by the informant and two others. Thereafter, the petitioner became angry and gave threat to the informant which was seen by the witnesses as mentioned in the written report. Therefore, it was apprehended by the informant that the petitioner may commit some illegal act and may harm him.

6. The FIR was lodged for the offence under Sections-353, 384 of the Indian Penal Code on the basis of aforesaid allegation. The police after investigation submitted charge sheet for the offence under Sections-353, 384 of the Indian Penal Code. Accordingly, cognizance was also taken.

7. The petitioner has filed petition u/S 239 of the Cr.P.C. for discharge as there was no sufficient material to proceed against him in the case which was rejected by the Magistrate passing impugned order.

8. This court in the instant case found no ingredient of offence u/S 353 & 384 of the Indian Penal Code. Section-351 of the Indian Penal Code defines Assault, wherein in the explanation, it is mentioned that “mere words do not amount to an assault”. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparations amount to an assault”.

9. From the allegation in the written report, this court further finds that there is no ingredient of Section-384 of the Indian



Penal Code as there is no any allegation that any extortion was done by the petitioner.

10. From the impugned order, it appears that the learned Magistrate has mechanically rejected the petition, filed by the petitioner u/S 239 of the Cr.P.C. on the ground that offences are serious in nature and witnesses have supported the case in the case diary but no any discussion has been made by the learned Magistrate about the statement of witnesses in the case diary.

11. In such circumstances, the impugned order passed by the court below is not in accordance with law.

12. Accordingly, the impugned order dated 09-04-2012 passed by learned Sub Divisional Judicial Magistrate, Khagaria in G.R. No. 1657 of 2004 arising out of Parbatta P.S. Case No. 248 of 2004 alongwith entire criminal proceeding against the petitioner is quashed.

13. This Cr. Misc. Application is therefore, allowed.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	07-09-2017
Transmission Date	07-09-2017

