

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.35867 of 2013

Arising Out of PS.Case No. -1234 Year- 2013 Thana -KATIHAR COMPLAINT CASE District-
KATIHAR

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1. Sanjay Mandal S/O Shri Shiv Narayan Mandal Resident Of Village-
Pothia, Police Station- Falka, District- Katihar Petitioner/s
Versus

1. The State Of Bihar
2. Shri Mahanand Yadav S/O Late Bhawanand Yadav Resident Of Mohalla-
Officer'S Colony, Mirchaibari (West To Pole Factory), Police Station-
Town (Sahayak), District- Katihar Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar, Advocate
For the Opposite Party/s : Mr. Parmeshwar Mehata (APP)
For the informant : Mr. Rajendra Pd. Sah, Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

4 13-01-2017 Heard learned counsel for the petitioner, learned APP
for the State as well as learned counsel for O.P. No.2.

2. There is no dispute with regard to status of the parties being co-villager. O.P. No.2 is a practising Advocate at Katihar Civil Courts. From complaint petition, it is also apparent that O.P. No.2 was not knowing/identifying the petitioner since before. On a certain query having been made on behalf of O.P. No.2, he got some sort of assurance with regard to identity of the petitioner being his villager and on account thereof, he directed the petitioner to stay at his place who was in search of one Kailash Mandal, an Advocate with a suggestion that on the following day, he will be able to meet him in the Court. It is also apparent that he allowed him to sleep in his office having Rs. 9,000/- in the drawer



of his table, one wrist watch of titan make as well as Nokia Mobile Set. It is also evident that on the following morning when OP No.2 did not find the petitioner, then he began to search and during course thereof, Amit Kumar, another counsel had informed that he had seen the petitioner at about 4:00 AM. In the aforesaid background, he also inquired from his younger brother with regard to the presence of petitioner at his house and was informed that he was not available.

3. On the above score, Complaint Case No. 1234/2013 was filed whereupon learned Chief Judicial Magistrate proceeded to conduct an enquiry under Section 202 Cr.P.C. himself, however, it was transferred under Section 192 Cr.P.C to the court of Sri Deepak Kumar, Judicial Magistrate-1st Class, Katihar vide order dated 03.06.2013, subsequently.

4. It is evident that vide order dated 10.16.2013, learned Magistrate took cognizance for an offence punishable under Sections 380 of the IPC and summoned the petitioner to face trial, the subject matter of instant petition.

5. The criteria, over which order of cognizance is to be interfered with, has been properly identified in the case of ***State of Hariyana & Ors. Versus Bhajan Lal & Ors*** as reported in ***AIR 1992 SC 604***, which are as follows:-



“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, on investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient grounds for proceedings against the accused.

(6) Where there is an express legal bar engrafted in any of the



provisions of the Code or the concerned Act (under which a criminal proceedings is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

6. Switching over facts of the case, it is apparent that apart from SA of the OP No.2, only one witness has been examined. After going through the same, it is apparent that none had disclosed that petitioner was knowing since before that cash, wrist watch as well as Nokia Mobile Set were ever left by the complainant which the petitioner succeeded in removing. Furthermore, neither the petitioner claimed knowing the O.P. No.2 since before nor O.P. No.2 claimed knowing the petitioner since before, and then allowing the petitioner to stay at his office, at night is found indigestible. As such, the conduct of the OP No.2 did not inspire confidence to the extent which could be a conduct



of an ordinary prudent man whereupon, is found duly covered under category no.5.

7. That being so, the order impugned is set aside.
Petition is allowed.

(Aditya Kumar Trivedi, J)

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