

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.35712 of 2011

Arising Out of Complaint Case No. 2954(C) Year- 2010 District- PATNA

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Naresh Murti S/O Late Keshav Murti R/O Vidya Niwas, Akashwani Road,
Khajpura, P.S. Shastri Nagar, Distt. - Patna

.... Petitioner

Versus

1. The State Of Bihar
2. Narayan Murti S/O Late Keshav Murti R/O Village - Vidya Niwas, Ashokpuri,
Road, Khajpura, P.S. Shastri Nagar District - Patna

.... Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. Abhay Kumar Singh, Advocate
Mr. Bharat Bhushan, Advocate
For the State : Mr. Rajendra Singh Shastri, APP
For opposite party no. 2 : Mr. Dilip Kumar, Adocate
Mr. Amit Kumar Anand, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 23-11-2017

Heard learned counsel for the petitioner and learned
counsel for the complainant/opposite party no. 2.

2. This application under Section 482 of the Code of
Criminal Procedure (for short 'Cr.P.C.') has been filed by the
petitioner for quashing the order dated 20.08.2011 passed by the
learned Judicial Magistrate, 1st Class, Patna in Complaint Case No.
2954(C) of 2010 whereby the learned Magistrate rejected the petition
filed under Section 251 of the Cr.P.C. for dropping the complaint



case in which cognizance was taken for the offence punishable under Section 500 of the Indian Penal Code (for short 'IPC').

3. It would be relevant to note here that earlier the petitioner had approached this Court for quashing the order of cognizance dated 03.02.2011 passed in instant Complaint Case No. 2954(C) of 2010. The said application was dismissed as infructuous, vide order dated 07.03.2013 passed by a Bench of this Court on the submission made by the counsel for opposite party no. 2 that the petition has been rendered infructuous in view of the fact that discharge petition filed by the petitioner has been rejected and the order has been challenged before this Court in the present application.

4. Learned counsel for the petitioner has submitted that in view of the liberty granted by this Court in Cr. Misc. No. 10137 of 2011, the entire case be heard on merits. He submitted that on the basis of the complaint and the statements of the witnesses, the impugned order taking cognizance of the offence was bad in law and the learned Magistrate ought to have dropped the proceeding in exercise of power conferred under Section 251 of the Cr.P.C.

5. Learned counsel appearing for the complainant opposite party no. 2 raised a preliminary objection regarding maintainability of the present case. He submitted that Section 251 of the Cr.P.C. is in



Chapter XX which relates to trial of summons cases by the Magistrate. He submitted that in view of the provisions prescribed under Section 251 of the Cr.P.C., an accused cannot seek discharge from the case, as no charge is framed in such matters. He also contended that even otherwise, the learned Magistrate has given a clear finding that the ingredients of the offence under Section 500 of the IPC are attracted and, hence, the petitioner cannot be discharged.

6. In reply, learned counsel for the petitioner submitted that it is true that the offence under Section 500 of the IPC is to be tried summarily and substance of accusation is to be explained, but at this stage, the accused may seek his discharge on the basis of the pleadings that in the given facts and circumstances, no case is made out against him.

7. I have heard learned counsel for the parties and perused the record.

8. Admittedly, the offence for which cognizance has been taken by the learned Magistrate is under Section 500 of the Indian Penal Code. As per the schedule of the Cr.P.C., the offence prescribed under Section 500 of the IPC is to be tried as summons case. The application for discharge filed by the petitioner under Section 251 of the Cr.P.C. deals with the trial of summons cases by the Magistrate when the accused appears before the Magistrate. As



per said provision, the particulars of the offence for which the accused shall be tried are to be stated to him and the court is required to ask whether he pleads guilty or has any defence to make, but it shall not be necessary for the Court to frame a formal charge.

9. In view of the clear language of the statute, at the stage of explanation of substance of accusation, the accused cannot invoke the jurisdiction of the court for discharge under Section 251 of the Cr.P.C.

10. It is well known that in a case triable by a court of Magistrate, if the case arises out of complaint, an application for discharge can be filed under Section 245 of the Cr.P.C. and if the case arises out of police case, an application for discharge can be filed under Section 239 of the Cr.P.C. Similarly, if the case is triable by a court of session, an application for discharge can be filed under Section 227 of the Cr.P.C. However, by no stretch of imagination, it can be said that an application for discharge can be filed in a summon-case by an accused under Section 251 of the Cr.P.C.

11. In that view of the matter, I am of the opinion that the application filed by the petitioner before the court of Magistrate under Section 251 of the Cr.P.C. for discharge from the case on the ground that the prosecution against the petitioner under Section 500 of the IPC is not maintainable, was misconceived and the learned



Magistrate has committed no mistake by dismissing such petition.

12. Accordingly, the application, being devoid of any merit,
is dismissed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.11.2017
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