

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.34720 of 2011**

Arising Out of Complaint Case No. 1005 (C) Year-2011 District- PATNA

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Principal, Mary Ward Kindergarten, Mahendru Ghat, Patna at the relevant time Sr. Karuna C.J., at present transferred and posted Headmistress, St. Mary's High School Singla, Darjeeling, resident of St. Mary's Convent, Singla village, P.S. & P.O. North point, District Darjeeling State West Bengal.

.... .... Petitioner

Versus

1. The State of Bihar
2. Md. Shaheed Khan son of Md. Sultan Khan resident of Dariyapur Darji Tola, Sabjibag, P.O. Bankipore, P.S.- Pirbahore, District- Patna.

.... .... Opposite Parties.

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**Appearance :**

For the Petitioner/s : Mr. K. M. Joseph, Advocate  
Mr. Sushil Kumar, Advocate  
For the State : Mr. Ramesh Chandra, APP  
For opposite party no. 2 : None

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

ORAL JUDGMENT

**Date: 21-11-2017**

Heard learned counsel for the petitioner and learned counsel for the State.

2. Though the complainant/opposite party no. 2 has entered into appearance through Mr. Vijay Anand, learned advocate, on repeated calls, he did not appear to contest the matter.

3. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 28.05.2011 passed by the learned Chief Judicial Magistrate, Patna in



Complaint Case No. 1005(C) of 2011 whereby the petitioner has been summoned to face trial for the offence punishable under Sections 504 of the Indian Penal Code.

4. The case of the complainant is that he had applied for admission of his daughter Saima Naz to LKG in Mary Ward Kindergarten of which the petitioner was Headmistress. The admit card in this regard was also issued. The daughter of the complainant went through a verification test on 22.11.2010 and the result of the test was announced on 03.01.2011. On 05.01.2011, the District Magistrate-cum-Collector issued an order through the confidential section to the Headmistress of the school directing her to admit the daughter of the complainant. Thereafter, Headmistress told the complainant to come to the school on many dates, but the admission was not given to his daughter. On 05.04.2011, when the complainant went and met the Headmistress at the Mary Ward Kindergarten for admission, she demanded Rs.50,000/- for admitting his ward in addition to admission fee of Rs.6,750/- and on his refusal, called her two men and asked them to push him out. Thereafter, two men took him forcibly outside the gate and snatched from him Rs.7000/- which he had brought for admission of his daughter.

5. Learned counsel for the petitioner submitted that the entire story narrated in the complaint is a bundle of falsehood. He



submitted that a large number of applicants had applied for admission in the school for 170 seats and the admission had to be made following a procedure of application and verification of documents and interview. The wards and their parents were interviewed and the list of selected candidates was published on the school notice board on 03.01.2011. The daughter of the petitioner was not among the selected candidates. The selected candidates had been admitted according to pre-announced procedure for the session 2011-2012 and the admission process was concluded on 29.01.2011. He submitted that there was no question of the Headmistress (petitioner) asking the complainant to meet her in the school for the purpose of admission of his ward on later dates as alleged by the complainant. He submitted that the District Magistrate has got no authority to direct the school administration to admit any child. Hence, any order given by him, as alleged by the complainant for admitting his daughter in the school was of no consequence. He submitted that there is no male attendant at the school and there is only one security guard provided from an agency at the gate of the school, who guards the gate to ensure the security of children in the school campus.

6. Learned counsel for the State submitted that by the impugned order dated 28.05.2011, learned Magistrate took



cognizance of the offence under Section 504 of the Indian Penal Code against the petitioner and under Sections 323, 341 and 379 of the Indian Penal Code against two unknown guards of the school. He submitted that the defence taken by the petitioner can be looked into only during trial. According to him, the allegations made in the complaint do attract the ingredients of the offence alleged and no illegality can be found with the impugned order.

7. I have heard learned counsel for the petitioner and learned counsel for the State and carefully perused the record.

8. I take judicial notice of the fact that Mary Ward Kindergarten is an old school being run in the township of Patna and is a school of repute. It would be manifest from the complaint itself that after initial verification, list of selected candidates was published in the school notice board on 03.01.2011. It would further be manifest from the complaint that after the result was published, the complainant claimed to have obtained a letter from the District Magistrate, Patna in the name of the principal of the school seeking favour for admission of his daughter in the school. There is nothing in the complaint to show that the District Magistrate, Patna had any authority in law to direct the Headmistress of the school to admit any child. The petitioner has specifically stated that the District Magistrate had no such authority. Since there is no contest by the



complainant, there is no reason to disbelieve the contention of the petitioner. Thus, from the complaint itself, it would transpire that the complainant desperately wanted admission of his ward in the school and for that purpose he was not hesitating in even seeking undue favour from the District Magistrate. However, when he failed in his effort to get admission of his ward, the instant complaint has been filed after inordinate and unexplained delay. The complainant has alleged that on 05.04.2011, when he went to meet the Headmistress of the school, an illegal demand of Rs.50,000/- was made from him and on his refusal to pay the amount, he was pushed out of the school by two unknown men. However, the complaint was filed after eight days on 13.04.2011. Moreover, the distance of Pirbahore Police Station from the school in question would be hardly 200 metres and the distance of Gandhi Maidan Police Station would be half a kilometer, but neither any steps under Section 154(1) nor under Section 154(3) of the Code of Criminal Procedure was taken by the complainant to institute complaint in the police station. It is also surprising that when the complainant has taken so much time in filing the case in the court against the petitioner as to why he made no effort to know the name of the two men, who are alleged to have pushed him out and snatched Rs.7000/- from him.

9. In view of the facts noted above, I find substance in the



arguments advanced by the learned counsel for the petitioner that the allegations made in the complaint are absurd and is manifestly attended with *mala fide* with an ulterior motive for wreaking vengeance on the petitioner with a view to spite her as she did not oblige the complainant in allowing admission of his ward.

10. Hence, the impugned order dated 28.05.2011 passed by the learned Chief Judicial Magistrate, Patna in Complaint Case No. 1005(C) of 2011 deserves to be quashed. It is ordered, accordingly.

11. The application stands allowed.

**(Ashwani Kumar Singh, J.)**

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