

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.35438 of 2011

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Nawal Kishore Singh, son of Sri Ram Prasad Singh, R/o village- hichhapur,
P.S.- Konch, District- Gaya. Petitioner

Versus

1. The State of Bihar

2. Navin Kumar Kedia son of late Sawarmal Kedia, R/o village- Mohalla-
Station Road, P.O. + P.S.- Khagaria, District- Khagaria

... .. Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Shri Prakash Srivastava, Advocate

Mr. Siddhartha Prasad, Advocate

For the Opposite Party/s : Mr. B.P.SINGH (APP)

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

Date : 31-10-2017

That instant Criminal Miscellaneous application has been filed for quashing the entire complaint case including the order of cognizance dated 19.05.1999 passed in Trial No. 374 of 1999 corresponding to Complaint Case No. 330C of 1998 whereby and whereunder the learned Judicial Magistrate was pleased to take cognizance under Section 454 and 380 of the Indian Penal Code.

2. Heard learned counsel for the petitioner and learned APP for the State. Nobody has appeared on behalf of opposite party no. 2.

3. O. P. No. 2 filed a complaint case in the court of learned C.J.M., Khagaria on 28.07.1998 alleging therein that on 25.07.1998 about 5-6 persons came raising alarm to open the door of residential house, thereafter, the mother of O. P. no. 2 replied



that no male member is present in the house, so there is no question to open the door. One person, namely, Vijay Kumar Singh stating himself as the Secretary to the Commissioner, directed Pankaj Kedia to be present but again it was told that no one is present in the house. In the meanwhile all persons attempted to break the main gate and after breaking the door all accused persons entered into the house and started searching Pramod Kedia. The complainant due to ill health was lying on his bed then Vijay Kumar Singh, Secretary to the Commissioner, took up a bag in which sum of Rs. 22,000/- and some documents were kept. In the meanwhile mob was assembled and raised alarm dacoits-dacoits, thereafter, all the accused persons fled away. Neighbour Pradeep Sarawagi identified this petitioner who has broken the door. It is further alleged that the complainant submitted a written report to the Officer Incharge, Khagaria on 25.07.1998 and the same was duly received and in token thereof, receiving was given by the Officer Incharge. Subsequently, the complainant came to know that the Officer Incharge, in connivance with the accused persons, instituted a false case against the complainant, thereafter, the complaint case was filed on 28.07.1998 and the same was registered as Complaint Case No. 330 C of 1998. After institution of the complaint case the learned C.J.M., Khagaria vide his order



dated 29.07.1998 directed the Officer Incharge, Khagaria to submit a report under Section 210 of the Cr.P.C. but the said order was not carried out and thereafter, the complaint case was transferred for inquiry and then the complainant was examined on solemn affirmation before Shri R. N. Rai, the then Judicial Magistrate on 16.02.1998 and four complainant witnesses were also examined and thereafter, the impugned order has been passed.

4. Submission is of false implication and that the petitioner being Deputy Superintendent of Police was in official duty as per the order of the District Magistrate, Khagaria to make search of Mahavir Bhandar, Station Road, Khagaria on 25.07.1998 along with other members of raiding party and as soon as they went there, the staff and owner of Mahavir Bhandar started closing the door of the shop and residence and in that process some of the Police officials including the Magistrate entered into the shop and then the shop owner started raising alarm, resulting, nearby persons assembled and they started pelting stones, resulting the Police Jeep No. BR1P-1340 was damaged and the driver and some of the Police officials received injury also, then on the basis of first information report lodged by the petitioner Khagaria P.S. Case No. 308 of 1998 was registered under Sections 147, 148, 149, 341, 323, 353, 333, 337, 307, 427 and 379 of the Indian Penal Code



against Navin Kumar Kedia, Vicky Marwari, Pappu Bhindsaria, Raju Marwari, Tarachand Tekriwal, Badri Prasad Kedia, Rajendra Prasad Kedia and Pradeep Sao and 50-60 unknown and in that case after completing investigation chargesheet has been submitted but only with a reason to take vengeance and with malafide intention the complaint case was lodged against the petitioner and one Vijay Kumar Singh, Secretary to the Commissioner, Food. Thereafter, against the petitioner no summons, bailable warrant and non-bailable warrant were served and after taking all the process Bala-Bala process under Section 82 Cr.P.C. was issued and the records of the petitioner was bifurcated whereas another co-accused Vijay Kumar Singh remained present and no witness of the complainant came forward before charge, resulting, he has been discharged vide order dated 05.09.2012. Learned counsel for the petitioner also submits that in this case also the O. P. No. 2 has not appeared. It is submitted that this complaint case is out and out a false and fabricated one and without waiting the inquiry report as earlier called for, the case has been transferred for inquiry by the learned Chief Judicial Magistrate though he has got no power to recall its own order but it has recalled the earlier order and transferred the case for inquiry. The impugned order being vexatious is fit to be quashed. Further in the written application



filed by the complainant before the Officer Incharge, Khagaria name of the petitioner is nowhere vide annexure-7.

5. Learned APP fairly submits that earlier the petitioner has filed Khagaria P.S. Case No. 308 of 1998 on 25.07.1998 itself against the complainant also and then this complaint case has been filed.

6. Having considered the submissions urged at Bar, going through the records and impugned order, I find that this complaint case has been filed in retaliation of Khagaria P.S. Case no. 308 of 1998 filed by the petitioner against the complainant and others and further find that co-accused Vijay Kumar Singh has already been discharged as no complaint witness has turned up for examination before charge vide order dated 05.09.2012 in Complaint Case no. 330 C of 1998. Accordingly, the impugned order appears malafide and vexatious and also misuse of the process of the court and as such, the impugned order taking cognizance is hereby quashed.

7. In the result, this application is allowed.

(Jitendra Mohan Sharma, J)

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AFR/NAFR	NAFR
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