

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.30058 of 2011

Arising Out of PS.Case No. -1 Year- 2001 Thana -null District- PATNA

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Mazhar Hussain, son of late Akhtar Hussain, Mohalla: Isapur, P.S.- Phulwarisharif ,
District- Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. Md. Saghirul Tauhid Rafique, son of Rafique Tauhid, resident of Millat Urdu
Middle School, Chunauti Kuan, Phulwarisharif, Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. S. Rizwanul Haque, Advocate

For the Opposite Party/s : Mr. R. C. Singh, APP

Mr. Anjeem Akhtar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 14-11-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 02.08.2011 passed by the Judicial Magistrate, 1st class, Patna, in Case No.326 (2) of 2001 arising out of Phulwarisharif P.S. Sanha Case No.515 dated 17.12.2000 of Non FIR Case No.01 of 2001, by which the learned Magistrate has fixed the case to explain substance of accusation to the accused for the offence under Section 427 Indian Penal Code under the provision of Section 251 of the Code of Criminal Procedure.

2. Lower Court records have been received.

3. Counsel for the petitioner has submitted that, initially, the informant gave written report in the form of *Sanha*



before the police on 17.12.2000 alleging that when he opened the main gate of the school, he saw some unknown persons had broken benches, tables, chairs, blackboard etc. of the school and had thrown the same in the courtyard of the school (Annexure-1). Thereafter, on 23.12.2000, second written report was given before the police raising suspicion against this petitioner (Annexure-2). Thereafter, the Investigation Officer submitted report on 09.01.2001 (Annexure-3) stating that he found loss of rupees ten thousand in the school and also raised suspicion against this petitioner. The police has reported that he learnt that the occurrence has been committed at the instance of Mazhar Hussain (petitioner) in order to get the premises vacated.

4. Counsel for the petitioner has submitted that one Md. Mumtaz Hassan is the tenant of the premises, which belongs to this petitioner. Petitioner has filed Eviction T.S. No.33 of 2000. The Informant is running a school in the aforesaid premises in collusion with Mumtaz Hassan with intention to grab the property of the petitioner.

5. Counsel for the petitioner has further submitted in para 11 of the petition that during course of investigation no broken benches, tables, chairs or black-board etc. were produced by the Informant. The Investigating Officer also did not find any broken benches, tables, chairs etc. at time of its inspection and, therefore,



ingredients of Section 427 Indian Penal Code is totally missing in the case.

6. Counsel for the petitioner has further submitted that no independent witness has been examined by the police during investigation. Only statement of five school teachers have been recorded.

7. Counsel for the Opposite Party No.2 as well as counsel for the State have appeared and submitted that Court below on the basis of the materials available in the case record fixed the case to explain substance of accusation to the accused under the provision of Section 251 Cr. P. C.

8. This Court after looking into the impugned order finds that the Court below has fixed the case for explaining the substance of accusation only on the ground that cognizance has been taken in the year 2001 for the offence under Section(s) 427 Indian Penal Code and the case is pending for explaining accusation since 02.08.2002.

9. From perusal of impugned order, this Court finds that Court below has not looked into the materials available on the record.

10. Cognizance has been taken under Section 427 of Indian Penal Code. One of the basic ingredients of offence under



Section 427 Indian Penal Code is that some damage should have been caused to the property. In the First Report, which was given on 17.12.2000, no body is named and allegation has been made that several articles like benches, tables, chairs, blackboard etc. had been broken by unknown persons. Similarly, subsequent petition was filed by the Informant on 23.12.2000 raising suspicion against the petitioner. The Investigating Officer in the report (Anneuxre-3) has stated that there was damage of rupees ten thousand caused to the school. The Investigating Officer has nowhere mentioned in the report that he found any broken articles at the place of occurrence. There is no seizure list of the broken articles as alleged in the written report.

11. In fact, some suspicion has been raised by the Informant in his second report filed by him before police on 23.12.2000. The Investigating Officer in the report (Annexure-3) has also raised suspicion against the petitioner on the basis of written report filed by the Informant.

12. Therefore, this Court is of the view that there was no ground to proceed with the case and to explain the substance of accusation to the accused under the provision of Section 251 Cr. P. C. As such, the court below has committed illegality in passing the impugned order by which he has fixed the case to explain substance



of accusation to the accused under Section 251 Cr. P. C. Continuation of further criminal proceeding against the petitioner will be abuse of process of Court.

13. In view of such, impugned order dated 02.08.2011 passed by the Judicial Magistrate, 1st class, Patna, in Case No.326(2) of 2001 arising out of Phulwarisharif P.S. Sanha Case No.515 dated 17.12.2000 of Non FIR Case No.01 of 2001, along with entire criminal prosecution against the petitioner is hereby quashed.

14. This application is, accordingly, allowed.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	11-12-2017
Transmission Date	11-12-2017

