

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.6759 of 2012

Arising Out of PS.Case No. -0 Year- null Thana -null District- SITAMARHI

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Ramji Sah S/O Late Vishwanath Sah Resident of Village- Ram Nagr, P.S.- Tarari,
District- Bhojpur At Ara Presently Posted as the District Transport Officer,
Sitamarhi- Cum- Executive Officer of Nagar Panchayat, Dumra, District-
Sitamarhi.

.... Petitioner

Versus

1. The State Of Bihar
2. Shailendra Kumar, Advocate, son of Late Rup Narain Kumar, Resident of Ward No.-4, P.S.- Dumra, District- Sitamarhi.

.... Opposite Parties

with

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Criminal Miscellaneous No. 13140 of 2013

Arising Out of PS.Case No. -1994 Year- 2009 Thana -SITAMARHI COMPLAINT CASE District- -

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Anjani Kumar Verma S/O Late Kedar Nath Verma Resident Of Old Mary Gold
School Campus, Abhay Carbon Factory Road Shivpuri, P.S. Shastri Nagar, District
Patna, the then District Magistrate, Sitamarhi.

.... Petitioner

Versus

1. The State Of Bihar.
2. Shailendra Kumar, Advocate, son of Late Rup Narain Kumar, Resident of Ward No. 4, P.S. Dumra, District Sitamarhi.

.... Opposite Parties

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Appearance :

(In Cr.Misc. No.6759 of 2012)

For the Petitioner : Mr. Pushpendra Kumar Singh, Advocate

For the State : Mr. Md. Mushtaque Alam, A.P.P.

For the Opposite Parties : Mr. Shankar Kumar, Advocate
Mr. Ajay Kumar No.1, Advocate

(In Cr.Misc. No.13140 of 2013)

For the Petitioner : Mr. S.N.P. Sinha, Sr. Advocate
Mr. J.N. Sinha, Advocate

For the State : Mr. Md. Mushtaque Alam, A.P.P.

For the Opposite Parties : Mr. Shankar Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 12-07-2017



Bothe the Cr. Misc. Nos.6759 of 2012 and 13140 of 2013 are disposed of by this common judgment as the same impugned order is under challenge in both petitions.

2. The petitioner has challenged the order dated 30.11.2011 passed in Complaint Case No.1994(C) of 2009 by Judicial Magistrate Ist Class, Sitamarhi thereby taking cognizance of the offence under Sections 352 and 504 of the Indian Penal Code and issuing summons against them to appear before the trial court.

3. Allegation in brief is that the complainant a practicing advocate was living in a Khas Mahal land after putting temporary construction. He removed the encroachment on the assurance to get the land settled on lease on paying amount of Rs.30,600/- to the concerned authority in the year 1997 but he filed petition for reducing the lease amount in the year 2005 but the District Magistrate increased the lease amount to Rs.1,04,600/ as the market rate after seven years had increased. The complainant filed a writ petition before the High Court, in the meanwhile, the District Magistrate sanctioned a project for construction of Children Park on the land. The complainant requested District Magistrate, Executive Officer Nagar Panchayat to stop inviting tender in the matter but declined and he was insulted and kicked out from the office of the accused persons.

4. Learned counsels for the petitioners submits that the



allegations as levelled if taken in entirety do not constitute offence under Sections 352 and 504 of I.P.C. The only allegation against then District Magistrate, the petitioner of Cr. Misc. No.13140 of 2013 was posted at Sitamarhi for a short period for approximately six months from 1.8.2009 to 25.1.2010 had sanctioned a project of Children Park on the proposal submitted by Nagar Panchayat over the government land so sanctioning of Children Park Project is not an offence on any account.

5. Further submission is that the petitioner of Cr. Misc. No.6759 of 2012 was implicated because he was Executive Officer of Nagar Panchayat during relevant period so he had moved that project. However, falsity of the allegation is evident from the fact that the complaint case was filed during the working hour of the court on 24.12.2009 whereas two witnesses at the enquiry stage have stated that this alleged occurrence was committed at 6.00 P.M. in the evening on 24.12.2009. Moreover, both are government officials and allegation levelled against them is with regard to their official act but under Section 197 Cr.P.C. no sanction order for promotion has issued by the State Government, so no court can take cognizance of an offence against a public servant without detaining sanction under Section 197 Cr.P.C.

6. Learned counsel appearing on behalf of the opposite



party no.2 submits that the complainant was ousted from the office of the petitioners when he objected construction of the Children Park.

7. Having regard to submissions of learned counsels of both sides and on perusal of record, it is apparent from perusal of the complaint that as per allegation occurrence was committed at 6.00 P.M. in evening on 24.12.2009 whereas the complaint was filed in the court on 24.12.2009 itself. The complaint case cannot be filed in the court after court hour, that apart even taking the entire allegation levelled in the complaint as true no prima facie case under Sections 352 and 504 of I.P.C. is made out moreover this complaint case appears malicious in nature as the government Khas Mahal land could not be settled in his favour and in its place a project of Children Park was sanctioned on the same land, therefore this case has been filed in order to wreak personal vengeance against these two public servants; so the aforesaid reason, the entire criminal proceeding including the cognizance order dated 30.11.2011 passed in Complaint Case No.1994(C) of 2009 is hereby set aside.

8. Both the petitions stand allowed.

(Arun Kumar, J)

N.H./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	21-07-2017
Transmission Date	21-07-2017

