

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.48874 of 2013

Arising Out of PS.Case No. -99 Year- 2011 Thana -DARBHANGA COMPLAINT CASE District-
DARBHANGA

- =====
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| 1. Manoj Sharma Son Of Raghunath Sharma Resident Of Village And P.S.-
Bahera, District- Darbhanga | | Petitioner |
| Versus | | |
| 1. The State Of Bihar | | |
| 2. Dev Kant Thakur, son of late Ravi Krishna Thakur, resident of village Bahera,
P.S. Bahera, district Darbhanga | | Opposite Parties |
- =====

Appearance :

For the Petitioner : Mr. Shailendra Kumar Jha, Adv.
For the Opposite Party : Mr. Md. Sufiyan, APP

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 18-01-2017

Heard the learned counsel for the petitioner and the State.

2. This is a petition for quashing the order, dated 01.07.2011, passed by Additional Chief Judicial Magistrate Benipur, Darbhanga, in T.R. No. 437 of 2011/T.R. No. 262 of 2012/T.R. No. 195 of 2013 arising out of Complaint Case No. 99 of 2011 whereby cognizance has been taken under Sections 191, 195, 196, 198, 199, 200, 201 and 120B of the Indian Penal Code.

3. The petitioner is one of the accused. Opposite party no. 2, Dev Kant Thakur, filed Complaint Case No. 99 of 2011 vide Annexure 4 against five accused person, including the petitioner.

4. The allegation in the complaint petition is that the complainant had lodged Banka P.S. Case No. 210 of 2010 for offence under Sections 365 and 366A of the Indian Penal Code for the alleged occurrence of kidnapping of his niece by Ramesh Ram, the brother of co-accused, Naresh Ram. To save the skin of his brother, Naresh Ram, filed Complaint Case No. 374 of 2010 making false allegation of kidnapping of Ramesh Ram. Further allegation is that false oral evidence was led in Complaint Case No. 374 of 2010 by Naresh Ram, Pramod Ram and Jitendra Sahni.

5. Considering the statement of the complainant, on oath, and the evidence of witnesses, examined during enquiry, the learned Court



below issued process against the petitioner and others to face trial for offence under Sections 191, 195, 196, 198, 199, 200 and 211/120B of the Indian Penal Code.

6. Submission of the petitioner is that the background of the petition would reveal that the complaint petition was brought with malafide intention to harass the petitioner and others. The offences alleged, i.e., giving false evidence was allegedly committed in a Court proceeding, therefore, only the Court, concerned, was competent to file a complaint and the cognizance is specifically barred if the complaint is filed by any other person than the Court in view of the provisions of Section 195(1)(b)(i) of the Code of Criminal Procedure.

7. Learned counsel for the opposite party submits that the power under Section 482 of the Criminal Procedure Code should be sparingly exercised and once the Court below had issued the summons by the impugned order it should not be likely interfered with unless strong circumstance appearing on the record so justified.

8. Section 191 of the Indian Penal Code defines the term “giving false evidence” only. Since, no punishment is prescribed under Section 191 of the Indian Penal Code, hence, cognizance is bad in law. Cognizance under Sections 195, 196, 199 and 200 of the Indian Penal Code is barred under the provisions of Section 195(1)(b)(i) of the Criminal Procedure Code unless the complaint is in writing of the Court, concerned, where false evidence was laid. Section 195(1) of the Code of Civil Procedure, 1973, reads as follows :

“195(1) : No Court shall take cognizance –

(a)(i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

b(i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is allege to



have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

[except on the complaint in writing of that Court or by such officer of the Court as that Court may authorize in writing in this behalf, or of some other Court to which that Court is subordinate]”

9. A bare perusal of Section 201 of the Indian Penal Code reveals that there is no allegation, at all, under Section 201 of the Indian Penal Code, which reads as follows :

“201 : Causing disappearance of evidence of offence, or giving false information to screen offender— whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false;

if a capital offence – shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

if punishable with imprisonment for life – and if the offence is punishable with [imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

if punishable with less than ten years’ imprisonment – and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.”

10. Further more, there is no allegation of criminal conspiracy by the accused persons. Therefore, apparently the offences alleged are



either not made out or cognizance is barred by the law, hence, cognizance order is an abuse of the process of the Court and to secure the ends of justice the same requires to be quashed.

11. Accordingly, the same is **quashed** and this application is **allowed**.

(Birendra Kumar, J)

SA/-

AFR/NAFR	NAFR
CAV DATE	
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