

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.30747 of 2013

Arising Out of PS.Case No. -1542 Year- 2010 Thana -PATNA COMPLAINT CASE District-
PATNA

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Sanjay Kumar Sinha, Son of Awadhesh Singh, R/O North Patel Nagar, P.S. Shastri
Nagar, Distt-Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Gauri Shankar Singh, Son of Sri Bechan Rai, R/O Village-Bigrahpur, P.S.
Jakkanpur, District-Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

Date: 14-07-2017

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

2. This application, under Section 482 of the Code of
Criminal Procedure, is directed against the order dated 21.06.2010
passed in Complaint Case No. 1542(C) of 2010, whereby the learned
Judicial Magistrate Ist class, Patna, summoned the 14 accused named
in the complaint petition including the petitioner, on inquiry, under
Section 204 of Cr.P.C, finding the prima facie case, under Sections
144, 147 and 506 of the Indian Penal Code against accused nos. 1 to
13 and also the accused no. 14-petitioner finding prima facie case
under Sections 166 and 506 of the Indian Penal Code against him.

3. The facts leading to this application is that



complainant-opposite party no. 2 filed the Complaint Case No. 1542 (C) of 2010 to the effect that Accused Nos. 1 to 13 named in the complaint petition tried to grab his ancestral land, on which, he made complaint regarding the said incident to the Janta Darbar of Hon'ble Chief Minister and also before the Senior Superintendent of Police, Patna, Superintendent of Police (Gramin), Patna, S.D.P.O., Patna and Officer-in-Charge, Ram Krishna Nagar Police Station, Patna. The proceeding under Section 144 Cr.P.C. was initiated in respect to Plot No. 1105 area 2 acres 96 decimal in the court of S.D.M., Sadar, registering Case No. 1463 (M) of 2009, Chandrika Rai and others versus Raj Ishwar Rai and others, in which, Complainant-O.P. No. 2 and his family members were members of Ist party and accused no. 1 to 13 were members of 2nd party. While Ist party appeared in the proceeding from 13.03.2010 to 13.05.2010 but Accused Nos. 1 to 13 did not appear due to that reason S.D.M., Sadar kept the record for Order. On 02.06.2010, when the complainant-opposite party no. 2 reached at his plot then he found that accused nos. 1 to 13 disobeying the order under Section 144 Cr.P.C, were engaged in filling sand and soil over his plot. When the complainant-opposite party no.2 made protest then they moved to cause assault having lathi and Pistol in their hand and firing was also made but he anyhow fled away and reached at Ram Krishna Nagar Police Station and gave written application, but Officer-in-charge (petitioner) refused to take action



against the accused nos. 1 to 13. Thereafter, complainant-opposite party no. 2 sent a written application to the Superintendent of Police Rural, Patna, I.G., Patna, S.D.O., Patna and Dy.S.P., Patna, for taking action. On 04.06.2010, complainant-opposite party no. 2 again reached at Ram Krishna Nagar Police Station but the Officer-in-charge (petitioner) refused to take action and threatened him to implicate in false case and also threatened him of dire consequences by fake encounter. It is further alleged by Complainant-Opposite Party No. 2 that accused no. 14-petitioner also helped to accused nos. 1 to 13 to grab his land. A proceeding under Section 107 numbered as Case No. 346 (M) of 2010 in between the complainant-opposite party no. 2 and accused nos. 1 to 13 is also pending in respect to the said land in the court of S.D.M., Sadar. The complainant-opposite party no. 2 also filed Criminal Revision No. 289 of 2010 against accused nos. 1 to 13, which is pending in the court of F.T.C.-III, Patna.

On perusal of complainant petition, the learned Judicial Magistrate Ist class, Patna, summoned the 14 accused cited in the complaint petition including the petitioner, on inquiry, under Section 204 of Cr.P.C, finding the prima facie case, under Sections 144, 147 and 506 of the Indian Penal Code against accused nos. 1 to 13, under Sections 166 and 506 against the accused no.14-petitioner.

4. Learned counsel for the petitioner submits that admittedly the accused no. 14-petitioner was posted as Officer-in-



Charge at Ram Krishna Police Station, Patna, and on perusal of the complaint petition, no specific overt act has been attributed against him about helping the accused nos. 1 to 13 cited in the complaint petition in filling the sand and soil over the land in dispute. Since, accused no. 14- petitioner was posted as Officer-in-charge at Ram Krishna Nagar Police Station as such the impugned order dated 21.06.2010, summoning the accused no. 14-petitioner, also on inquiry under Section 204 of Cr.P.C, finding the prima facie case, under Sections 166 and 506 of the Indian Penal Code without previous sanctioned as required under Section 197 Cr.P.C. after notification dated 16.05.1980, issued by the State Government under Section 197(3) Cr.P.C. regarding applicability of provision of Section 197 (2) Cr.P.C. also to the Officers and men of Bihar Police Force is illegal and abused of the process of the court.

5. Learned counsel for the complainant-opposite party no. 2 submits that there is no illegality in the impugned order but fairly conceded that after issuing the notification by the State of Bihar on 16.05.1980 under Section 197(3) Cr.P.C. the protection of Section 197(2) Cr.P.C. is also extended to the Police Officer and Police Personnel and the O.P. No. 14-petitioner was posted as Officer-in-Charge of Police Station, Ram Krishna Nagar, Patna at the time of occurrence as detailed in the complaint petition.

6. On perusal of the complaint petition, it is apparent



that accused no. 14-petitioner was posted at Ram Krishna Nagar Police Station within the period of occurrence as Officer-In-Charge. As such, without previous sanction of the State Government, as required under Section 197(2) Cr.P.C after notification dated 16.05.1980 issued under Section 197(3) Cr.P.C., by the State of Bihar summoning the accused no. 14-petitioner also, on enquiry, under Section 204 Cr.P.C., finding the prima facie case, under Sections 166 and 506 of the Indian Penal Code is illegal and abuse of the process of the court.

7. In the result, the order dated 21.06.2010 passed in Complaint Case No. 1542(C) of 2010 in respect to only summoning the accused no. 14-petitioner, finding prima facie case under Sections 166 and 506 of the Indian Penal Code is hereby quashed. Accordingly, this application is allowed.

(Rajendra Kumar Mishra, J)

Bhardwaj/-

AFR/NAFR	
CAV DATE	
Uploading Date	28.07.2017
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