

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.17151 of 2014

Arising Out of PS.Case No. -231 Year- 2013 Thana -MUNGER COMPLAINT CASE District-
MUNGER

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Vijay Prakash Keshari, Son of Anup Lal Keshari, Resident of Village - Tetiya
Bambar, Police Station - Sangrampur, District - Munger

.... Petitioner/s

Versus

1. The State of Bihar
2. Bibhash Chandra Jha, son of late Subodh Chandra Jha, resident of village -
Khaugadhi, P.S.- Sangrampur, District - Munger at present resident of Sri
Shailesh Kumar, Bengali Tola, Belan Bazar, Munger

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rajesh Kumar Pandey, Advocate.
For the opposite party No.2: Mr. Sanjay Prakash Verma, Advocate.
For the Opposite Party/s : Mr. Binod Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 25-07-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 31.01.2014 passed by the Judicial Magistrate, 1st Class, Munger, in Complaint Case No. 231C of 2013 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioner and other accused persons for the offences under Sections 465 and 471 of the Indian Penal Code.

2. Heard learned counsel for the petitioners and State.

3. As per complaint filed by the complainant who is employed as Clerk in the District Education Office, Munger, that he



was living as a tenant in the house on upper floor whereas the petitioner along with his family members was residing in the ground floor. When the complainant was working in the office on 9.8.2010, this petitioner along with 2-3 persons entered into the office, came to his table and forced the complainant to show the official letter and give photocopy of the same. The petitioner started assaulting the complainant when he refused to hand over the same without permission of District Education Officer. Thereafter, they snatched some letters and got photocopy of those letters and got the signature of the complainant on them.

4. Heard learned counsel for the petitioner and the State as well as opposite party No. 2.

5. It has been submitted on behalf of opposite party No. 2 that petitioner is a fraudulent person. He was engaged in issuance of forged transfer certificate, education training certificate, age certificate etc. It is further alleged that this petitioner was living in the house of Shailesh in Bengali Tola and with a view to get the fund under Chief Minister Cycle Yojana, got the admission of his daughter Akancha Anand in Jagannath Uchch Vidhayala, in connivance and consent with other accused persons of that school. He got a forged transfer certificate dated 17.4.2011 issued from Middle School, Kudai, and got the name of Akanchha Anand included in the list of



beneficiaries of the school, who were entitled to receive money in the said scheme. When the complainant learnt that accused had got the name of Akancha Anand in the list of beneficiaries of Jagannath Uchch Vidyalaya, then accused persons threatened and ultimately implicated him in this false case. The photocopy of forged transfer certificate issued from Khadui Middle School and list of beneficiaries in the Chief Minister School Yojana are enclosed with the complaint. The petitioner got admission of his daughter in Notre Dam Academy in Montessary also where she was studying in the academic Sessions of 2011-12 and her attendance was shown 97 percent in Class IX of Jagannath High School only for the purpose of receiving money on the basis of forged transfer certificate illegally. The wife of the complainant Shivani Jha obtained this information under Right to Information Act.

6. It is alleged in the complaint petition that on 2.3.2013, when the petitioner was returning to his house from the school, he surrounded the complainant and forbade from collecting evidence against him. It is further alleged that on 3.3.2013 the petitioner with other accused persons came to the house of the complainant and gave threat that he will implicate the complainant and his wife in a false case and send them to jail. The accused persons caught hold the collar of the complainant and some unknown



miscreants pointed out pistol on his head and threatened to kill him. When he went to give information on 4.3.2013 to Kasim Bazar Police Station, the petitioner was found sitting in the Police Station and the Officer-in-Charge refused to register the First Information Report. Thereafter, the complaint was filed on 5.3.2013 and after holding enquiry, the impugned order has been passed.

7. Learned counsel for the petitioner has submitted that the instant complaint case has been filed as a vengeance to falsely implicate the petitioner who has earlier filed a Criminal Case vide Kasim Bazar P.S. Case No. 101 of 2012 dated 24.6.2012 against the present complainant for the offence under Sections 376 and 511 of the Indian Penal Code. The police in that case after investigation, submitted charge sheet against the complainant for the offence under Section 354 of the Indian Penal Code. The complainant remained in custody in that case for three months. It has further been submitted by the learned counsel for the petitioner that earlier for the same allegation as levelled in the instant complaint petition, (that the petitioner on the basis of getting forged certificate, admitted his daughter Akanchcha Anand in Jagannath High School and her name was included in the list of beneficiaries to get the amount under Chief Minister Cycle Scheme, while she was studying in Notre Dam Academy,) was filed before the Superintendent of Police, Munger.



The Superintendent of Police, Munger, got the matter enquired by the concerned Police Station and the Officer-in-Charge Tetiya Bamber enquired the matter and found the allegation false, frivolous and motivated as the transfer certificate was never issued by the concerned school and the student never attended the school. It has further been submitted that subsequently, the complainant made complaint before the Divisional Commissioner, Munger, levelling same allegation. The Divisional Commissioner, Munger, directed the Sub Divisional Officer to enquire into the said allegation. The Sub Divisional Officer, Munger, conducted enquiry and submitted his report vide letter dated 1.6.2013 wherein he found that accusation was motivated. The complainant by misusing his official position as Clerk in the District Education Office, got admitted the daughter of petitioner Akanchha Anand on paper, on the basis of forged transfer certificate and showed admission in two schools in the same Academic year. The Sub Divisional Officer found the allegations unfounded. The Sub Divisional Officer, thereafter, recommended for necessary action to be taken against the complainant. The photocopy of the letter dated 1.6.2013 of the Sub Divisional Officer, Munger, has been enclosed as Annexure-6. Pursuant to the report of the Sub Divisional Officer, Munger, the Divisional Commissioner, vide letter dated 27.8.2013, directed the Regional Education-cum-Director, Munger Division to



take departmental action against the complainant for creating forged document to implicate the petitioner which has been marked as Annexure-7. The wife of the complainant also filed a complaint before the Regional Education-cum-Deputy Director leveling identical allegation of creating forged transfer certificate to ensure admission for availing benefit of amount under Chief Minister Bicycle Scheme. The Regional Education-cum-Deputy Director, directed the District Education Officer, Munger, to enquire into the matter and after holding enquiry, he submitted report dated 30.9.2013 holding the complainant himself guilty of preparing forged transfer certificate to malign and making frivolous complaint. The photocopy of the aforesaid report is enclosed as Annexure-8. The Regional Education-cum-Deputy Director, Munger Division, gave a detailed finding on each charge by his enquiry report dated 27.11.2013 holding the complainant guilty of misusing his official position in collusion with the In-charge Principal of Jagannath High School, in preparing forged and fabricated transfer certificate. The daughter of the petitioner did not attend the school for single day and thus was not entitled to receive the benefit and her name was wrongly included in the list. The photocopy of the aforesaid enquiry report dated 27.11.2013 has been enclosed as Annexure-9.

8. The counsel for the State has submitted that court



below has after looking into the Solemn Affirmation of the complainant, statement of the victim girl and the documents filed by the complainant found *prima facie* case against the petitioner.

9. From the facts of the case as stated above, this Court finds that main allegation made in the complaint is of including the name of the daughter of the petitioner in the list of beneficiaries in the school register of Jagannath Uchch Vidyalaya, to get the benefit of Government Cycle Scheme, whereas at that relevant time, the daughter of the petitioner was studying in Notre Dam Academy.

10. From the various documents filed by the petitioner in the instant case as discussed above, it appears that prior to filing of the instant complaint, similar type of complaint was made by the complainant before Superintendent of Police, Munger, Divisional Commissioner, Munger and Regional Education-cum-Deputy Director, Munger, and matter was enquired by all those authorities and the allegation was found to be false and frivolous. They exonerated the petitioner and ordered to take necessary action against the complainant for fabricated and frivolous complaints. It is also the fact that prior to lodging of the instant complaint, this petitioner has filed case against the complainant for the offence under Sections 376 and 511 of the Indian Penal Code vide Kasim Bazar P.S. Case No. 101 of 2011.



11. In such circumstances, this Court is of the view that instant complaint was filed by the complainant with vengeance out of the personal grudge to harass the petitioner.

12. The Hon'ble Supreme Court in a case of ***State of Haryana and Others Vrs. Bhajan Lal and Others***, reported in ***AIR 1992, S.C. 604*** has culled out seven grounds by way of illustration where the Court in exercise of power under Section 482 Cr. P.C. can interfere with the criminal proceeding are as follows:

“1) *Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*

2) *Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under S. 156(1) of the Code except under an order of a Magistrate within the purview of S. 155(2) of the Code.*

3) *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*



4) *Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under S. 155(2) of the Code.*

5) *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge”.*

13. Therefore, this Court is of the view that the order



taking cognizance along with entire prosecution of the petitioner is illegal and will abuse of the process of law and mere harassment to the petitioners.

14. In such circumstances, the order taking cognizance dated 31.01.2014 passed by the Judicial Magistrate, 1st Class, Munger, along with the entire Criminal Proceedings against the petitioner is hereby, quashed.

15. This Criminal Miscellaneous application is accordingly allowed.

(Sanjay Priya, J)

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AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	10.08.2017
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