

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.37298 of 2013

Arising Out of PS.Case No. -568 Year- 2013 Thana -COMPLAINT CASE District- BANKA

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1. Rekha Kumari Wife Of Sri Sunil Kumar, Resident Of Mohalla - Shanti Nagar,
P.S. - Dumra, District - Sitamarhi

.... Petitioner/s

Versus

1. The State Of Bihar
2. Jagdamba Chaudhary Son Of Late Ramavtar Chaudhary R.S. - Mirzapur
Changeri, P.O. - Changeri, P.S. - Barahat, District - Banka

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Syed Asgher Najmi, Advocate

For the Opposite Party/s : Mr. APP

Mr. Ajay Mukherjee, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 14-07-2017

1. The present petition has been filed for quashing the order dated 12-06-2013 passed by the learned Chief Judicial Magistrate, Banka passed in Complaint Case No. C-568 of 2013, by which and whereunder, the learned Magistrate took cognizance against the petitioner for the offence under Sections-406/323/504 of the Indian Penal Code.

2. Heard learned counsel appearing for the petitioner and learned counsel for opposite party No. 2. as also learned counsel, appearing for the State.

3. The short fact of the case is that a red colour tractor bearing registration No. 10B-4963 was seized from the house of the



complainant on 31-12-2007 by SHO of Barhat Police Station and was sent to DTO, Banka (Mahendra Kumar). The complainant sent legal notice to the then DTO Banka but he was transferred and Rekha Kumari (petitioner) joined as new DTO., Banka. The complainant told the petitioner that all the relevant papers of the aforesaid truck has been taken by the SHO, Barhat Police Station, Sanjay Pandey. The then DTO made demand of Rs. 40,000/- from the complainant which was refused by the complainant. The complainant made complaint before the Superior Authority against the petitioner for making demand of Rs. 40,000/- for release of the tractor but no action was taken. The complainant also went to Janta Darbar of the Chief Minister to make complaint about demand of Rs. 40,000/- by petitioner but the incorrect report was sent by the authority to the Chief Minister. The complainant met with the District Magistrate, Banka who assured to get the tractor released but the tractor was not released. The complainant filed writ petition in the High Court vide CWJC No. 126 of 2012 by which he was directed to go to the District Magistrate Janta Darbar. The complainant went to the petitioner for release of the tractor where she demanded Rs. 25,000/-, which was paid by the complainant but even then the tractor was not released by the petitioner. The complainant was beaten by two unknown persons in the Chamber of the petitioner and was also abused.



4. Counsel for the petitioner has submitted that the tractor of the complainant was seized by the SHO, Barhat Police Station when the same was driven by son of the complainant without relevant papers. The SHO, Barhat sent the prosecution report for necessary action under M.V. Act to District Transport Officer, Banka vide D.R. No. 01 of 2008 dated 01-01-2008 stating therein that on 31-12-2007, a tractor of Mahindra company with trailer both unregistered was seized from possession of Kallu Kumar S/o Sri Jagdambi Choudhary, Village-Mirzapur, P.S. Barhat. He was driving the said tractor without driving licence and relevant documents. The seized tractor and trailer was kept safely in police station campus. The letter was sent to the complainant by letter No. 319 dated 02-06-2008 by the then DTO requiring the complainant to produce relevant registration documents (Annexure-3) so that further steps be taken in this regard. The complainant sent a pleader notice with regard to the release of tractor and trailer without furnishing any registration number and levelling frivolous allegation against the petitioner (Annexure-4). The complainant also filed application under RTI (Annexure-5) which was replied by the Public Information Officer-cum-DTO, Banka on 09-08-2011 stating that for release of the vehicle, the owner book and other documents are necessary (Annexure-6). The writ petition filed by the complainant bearing CWJC No. 126 of 2012 for release of the tractor



was dismissed as withdrawn in the Hon'ble court vide order dated 10-09-2012 (Annexure-2). Thereafter, the petitioner informed the complainant about dismissal of the writ petition vide Memo No. 160 dated 26-02-2013 asking him to produce necessary papers for release of the vehicle (Annexure-7).

5. The complainant did not produce the relevant papers of the seized tractor and to hide its own shortcomings, and to browbeat the petitioner, filed the instant complaint petition on 08-04-2013 vide C-568 of 2013.

6. The petitioner joined as DTO, Banka on 27-07-2011 and on the date of filing of the instant Cr. Misc. Petition, she was posted on the same post. The tractor was seized on 31-12-2007 much prior to the petitioner's joining there and the seized tractor cannot be released without proper registration documents.

7. The complainant has lodged this false and frivolous complaint only with a view to put pressure on the petitioner to release his tractor and trailer without verification of documents and without verification of registration papers.

8. Learned counsel for opposite party No. 2 as well as counsel for the State has submitted that there is no illegality in the impugned order. The court below has found prima facie case after holding inquiry u/S 202 of the Cr.P.C. on the basis of allegation made



in the complaint petition and on the basis of SA of the complainant and the statement of witnesses recorded during inquiry.

9. Having heard both the parties and from perusal of the allegation made in the complaint petition as well as taking into consideration the facts of the case, this court finds that the then SHO, Barhat namely Sanjay Pandey in course of his official duty on 31-12-2007 seized the tractor of the complainant and the same was sent to DTO, Banka. The complainant was directed by the DTO, Banka to produce relevant papers. The complainant, instead of producing the relevant documents, sent legal notice and also, filed writ petition in the Hon'ble Court vide CWJC No. 126 of 2012. The writ petition filed by the complainant for release of the tractor was finally dismissed as withdrawn by the Hon'ble Court with direction to the complainant to seek alternative remedy available to him in accordance with law.

10. After dismissal of the writ petition (Annexure-2) the complainant was again directed by the DTO, Banka vide letter dated 26-02-2013 (Annexure-7) to produce the relevant papers for release of the vehicle but the complainant instead of producing the documents for release of the vehicle had filed the instant complaint case on 08-04-2013.

11. Section-197(1) of the Cr. P.C. speaks that when any



person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction.

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government

12. Counsel for the petitioner has relied upon decisions reported in *2007(1) PLJR 338 (Atul Krishna Biswas Vs. State of Bihar & Anr.)* and *2007(1) PLJR 555 (Rajesh Kumar Singh Vs. Bhola Kumar Yadav)* as also a decision of Apex Court reported in *2006(1) SCC 557 (Rakesh Kumar Mishra Vs. The State of Bihar & Ors.)* and has argued that without sanction, the order of cognizance is wholly illegal and, is unsustainable in the eye of law.

13. From the facts of the instant case as stated above, it is apparent that the petitioner made demand of relevant documents for release of the tractor of the complainant, in discharge of her official



duty. But instead of producing the relevant documents in terms of letter issued by the petitioner vide Memo No. 160 dated 26-02-2013, the complainant has filed the instant complaint case against the petitioner on 08-04-2013 numbered as C-568 of 2013.

14. The *Hon'ble High Court in a decision reported in 1992 Supplementary (1) SCC 335, (State of Haryana & Ors. Vs. Bhajan Lal & Ors.)* has mentioned in paragraph-102 that where criminal proceeding is manifestly attended with mala fide and/or where 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, the criminal proceeding is fit to be quashed.

15. In the instant case, from the facts discussed above, this court is of the view that the complainant has filed the instant case with ulterior motive when the petitioner made demand of relevant documents for release of the tractor vide Memo No. 160 dated 26-02-2013 for wreaking vengeance on the accused and with a view to spite her due to private and personal grudge.

16. It is further apparent that the petitioner made demand of relevant documents in discharge of the official duty. Therefore, learned Magistrate ought not have taken cognizance against the petitioner except with the previous sanction of the State Government



as required u/S 197(1) Cr.P.C.

17. Therefore, this court is of the view that continuance of the instant criminal proceeding against the petitioner will amount to harassment to the petitioner and also will be an abuse of the process of law.

18. Therefore, the impugned order dated 12-06-2013 passed by the learned Chief Judicial Magistrate, Banka passed in Complaint Case No. C-568 of 2013 as well as entire criminal proceeding against the petitioner is, hereby, quashed.

19. This Cr. Misc. Petition is *allowed*.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	21-7-17
Transmission Date	21-7-17

