

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.44441 of 2013

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

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1. Yogendra Prasad, Son of Late Dukhi Sah (wrongly mentioned as Dhukhit Prasad)

2. Alok Kumar, Son of Sri Yogendra Prasad

Both R/o Mohalla-Hospital Road, Ward No.2, P.S.- Jainagar, District -Madhubani

.... Petitioners

Versus

1. The State of Bihar

2. Raj Kumar Gupta, S/o Late Rajendra Prasad Gupta, Resident of Village- Jainagar Marwari Mohalla, Ward No. 8, P.S.- Jaynagar, District- Madhubani

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Thakur, Advocate

Mr. Ravi Ranjan, Advocate

For the Opposite Party no.2: Mr. Manoj Kumar Manoj, Advocate

For the State : Mr. Pradip Narayan Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 25-04-2017

This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioners for quashing the order dated 20.05.2013 passed by the learned 1st Additional Sessions Judge, Madhubani in Cr. Revision No. 607 of 2011 by which he has dismissed the revision application preferred by the petitioners against the order dated 25.10.2011 passed by the learned



Chief Judicial Magistrate, Madhubani in Complaint Case No. 189 of 2011 by which he has issued process against the petitioners for facing trial for the offence punishable under Sections 195, 263, 182, 500, 389 and 120-B of the Indian Penal Code.

2. The aforesaid summoning order dated 25.10.2011 was passed on the basis of complaint filed by one Raj Kumar Gupta alleging, inter alia, that he was falsely made accused in Jainagar P.S. Case No. 221 of 2009 dated 21.12.2009 under Sections 376, 511, 323 and 504 of the Indian Penal Code and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and after investigation and supervision, the police had found the said case to be false and a report was submitted by the police under Section 182 and 211 of the Indian Penal Code against the informant and on 29.01.2010 one Renu Devi had filed an application through her lawyer saying that at the instigation of accused persons and on allurement of money, she had instituted aforesaid Jainagar P.S. Case No. 221 of 2009.

3. Pursuant to the institution of the aforesaid complaint under Section 200 of the Code of Criminal Procedure, the complainant was examined on solemn affirmation in which, he has supported the allegations made in the complaint. He stated that four accused persons including the two petitioners of the present case got



a case lodged against him by a lady of scheduled caste with an allegation to attempt to commit rape and, during investigation, the case was found false. In course of inquiry under Section 202 of the Code of criminal Procedure four witnesses namely, Ram Kumar Paswan, Rajesh Pradhan, Ajay Kumar and Subhash Chandra Mishra were examined whereafter, the learned Chief Judicial Magistrate, Madhubani vide order dated 25.10.2011 summoned the petitioners and two others finding a prima facie case to be made under Sections 195, 203, 182, 500, 389 and 120-B of the Indian Penal Code.

4. The aforesaid order was challenged by the petitioners before the revisional court but vide impugned order dated 20.05.2013 the learned 1st Additional Sessions Judge, Madhubani dismissed the revision application holding that the order passed by the learned Chief Judicial Magistrate did not suffer from any illegality.

5. Mr. Ajay Kumar Thakur, learned Advocate appearing for the petitioners submitted that the instant complaint has been lodged by a private person and in view of statutory bar under Section 195 of the Code of Criminal Procedure, the learned Chief Judicial Magistrate could not have taken cognizance of the offences punishable under Sections 195 and 182 of the Indian Penal Code. He submitted that the other offences under which cognizance



has been taken are also not attracted in the present case as there is no material to support the ingredients of those offences.

6. On the other hand, Mr. Manoj Kumar Manoj, learned counsel appearing on behalf of the opposite party no.2 submitted that the instant application under Section 482 of the Code of Criminal Procedure is as a matter of fact second revision, which is barred under Section 397(3) of the Code of Criminal Procedure. He contended that a false and frivolous case was instituted against the complainant at the behest of the petitioners and two others and, thus, the complainant had rightly prosecuted the petitioners for the offences alleged and the court below committed no error in summoning them to face trial for the offences alleged.

7. I have heard learned counsel for the parties and carefully perused the record.

8. Firstly, so far as the contention of the petitioner that since a revision application was already preferred by the petitioners against the order passed by the learned Chief Judicial Magistrate, the instant application under Section 482 of the Code of Criminal Procedure Code is not maintainable is concerned, it is well settled that nothing in the Code of Criminal Procedure shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order



under the Code of Criminal Procedure or to prevent the abuse of the process of any court or otherwise to secure the ends of justice. The inherent power under Section 482 of the Code of Criminal Procedure is quite different from the power of revision under Section 397 of the Code of Criminal Procedure. Therefore, in spite of the bar under Section 397(3) of the Code of Criminal Procedure, in view of the ratio laid down by the Hon'ble Supreme Court in **Krishnan and Another vs. Krishnaveni and Another [(1997)4 SCC 241]** and **Madhu Limaye vs. State of Maharashtra [(1977) 4 SCC 551]**, a second revision under Section 482 of the Code of Criminal Procedure would be maintainable.

9. Coming back to the facts of the present case, apparently, a private complaint has been filed by the complainant for initiating the prosecution against the petitioners, inter alia, for the offences under Sections 182 and 201 of the Code of Criminal Procedure. In view of the express bar created under Section 195 of the Code of Criminal Procedure, the learned Magistrate could not have entertained the complaint except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate.

10. From the allegations made in the complaint, I further find that the ingredients of the other offences are also not



attracted in the present case.

11. In that view of the matter, the order dated 25.10.2011 passed by the learned Chief Judicial Magistrate was erroneous in law. I am of the opinion that the revisional court ought to have interfered with the aforesaid order passed by the learned Chief Judicial Magistrate instead of dismissing the revision application mechanically.

12. For the reasons recorded, hereinabove, the order dated 20.05.2013 passed by the learned 1st Additional Sessions Judge, Madhubani in Cr. Revision No. 607 of 2011 is set aside. Consequently, Complaint Case No. 189 of 2011 and all proceedings arising therefrom are also hereby quashed.

13. The application stands allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.04.2017
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