

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.44826 of 2013

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

=====

Amrendra Kumar S/O Late Teg Bahadur Singh, (Advocate) Resident Of Road No.12, Rajendra Nagar, P.S. Kadamkuan, District- Patna, Posted As S.H.O. Khizarsarai, Police Station, District- Gaya, Presently Posted As S.H.O. Fatehpur Police Station, District- Gaya

.... Petitioner

Versus

1. The State Of Bihar
2. Sri Vishnu Kumar son of Late Amerika Sao resident of village- Saidpur (Miantoli), P.S.- Khijarsarai, District- Gaya.

.... Opposite Parties.

=====

Appearance :

For the Petitioner/s : Mr. Shiv Shankar Sharma, Advocate
Mr. Binay Kumar Singh, Advocate
For the State : Mr. Mayanand Jha, APP

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 19-05-2017

Despite valid of service of notice, neither the complainant/opposite party no. 2 nor his advocate has chosen to appear and contest the matter.

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

3. This application under Section 482 of the Code of Criminal Procedure (for short 'CrPC') has been filed by the petitioner for quashing the order dated 28.02.2012 passed by the



learned Judicial Magistrate, 1st Class, Gaya in Complaint Case No. 1456 of 2010 by which the petitioner has been summoned to face trial for the offences punishable under Sections 323, 342 and 379 of the Indian Penal Code (for short 'IPC').

4. Learned counsel for the petitioner submitted that the instant case is based on a false and concocted story. He contended that the complainant and his family members have been made accused in a case related to dowry demand by one of the accused Rubi Kumari, who is none else but the mother of the child, who is said to have been taken away forcibly by her. He contended that so far as the petitioner is concerned, he has nothing to do with the entire incident. At the relevant time, he was the Officer-in-Charge of Khizarsarai Police Station and his duty was to maintain law and order. He contended that the complainant wanted the child to be handed over to him by the police which the police could not do as it had no such power. Hence, out of hostility, the instant false complaint has been filed against the petitioner.

5. On the other hand, learned counsel for the State submitted that on the basis of the complaint and the materials collected during inquiry, the learned Magistrate found *prima facie* materials to summon the petitioner to face trial for the offence under Sections 323, 342 and 379 of the IPC. He contended that at



this stage, merely on the basis of defence taken by the accused petitioner the veracity of the case of the complainant cannot be doubted.

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

7. The complaint was instituted by one Vishnu Kumar against the petitioner, who was posted as the Officer-in-Charge of Khizarsarai Police Station, Gaya, six unknown constables posted in the police station and Rubi Kumari, Madan Sao, Lalita Devi and Ram Lakhan Sao.

8. The accused Rubi Kumari named in the complaint is sister-in-law (*bhabhi*) of the complainant whereas the accused Madan Sao and Lalita Devi named in the complaint as accused are the parents of Rubi Kumari and accused Ram Lakhan Sao is one of her distant relatives.

9. It is stated in the complaint that on 02.08.2010 when the complainant was coming back to his village Sreepur, P.S.-Belaganj, District-Gaya after attending the *Sradh* ceremony of wife of Kashi Sao and as soon as he reached at the eastern side of the river Falgu, the private accused persons named in the complaint intercepted him and tried to forcibly take away his nephew Suraj Kumar but any how the complainant managed to reach to



Khizarsarai Police Station. It is stated that when he reached to the police station, the Officer-in-Charge of Khizarsarai Police Station took away Rs.500/- from his pocket and snatched his wrist watch. He was also assaulted with fists and slaps. He took his signature and the signature of one Binod Kumar on a blank sheet of paper and put him in Thana Hazat and threatened him not to raise *hulla*.

10. The complainant was examined on solemn affirmation under Section 200 of the CrPC. In his statement made on oath, he has completely changed his version. He stated that on 02.08.2010 at about 6:00 a.m. he was going to a different village from his native village and when he reached to the east of the river Falgu, the accused persons who were following him tried to snatch his nephew. When he reached to the police station, the Officer-in-charge put him in the Hazat after assaulting him and taking away Rs.500/- from his pocket and his wrist watch. He stated that the Officer-in-Charge threatened that he would implicate him in case of kidnapping. He told that the child belongs to mother and not the father and hence the mother is entitled to possess the child. He handed over the child to Rubi Kumari. He obtained his signature and the signature of his uncle on blank sheet of paper. He stated that a written report regarding the incident was given to the Superintendent of Police and the copy of the same would be



submitted later on.

11. In reply to the court question, he admitted that Rubi Kumari is wife of his elder brother and she has instituted case of dowry demand upon him and his relatives. He also admitted that the child Suraj Kumar is living with her mother since past four months.

12. In course of inquiry, witness no. 1 Hira Mani Devi, mother of the complainant stated that when she reached at the place of occurrence she saw that Madan Sao, Ramlakhan Sao, Kavita Devi and Rubi Devi were trying to snatch away the child from the complainant. In reply to the court question, she stated that she was following her son Vishnu Kumar along with Mahesh Kumar. She admitted that her daughter-in-law Rubi Kumari is not living in her matrimonial home since last one year. She stated that Rubi Kumari had instituted a case against her and her family members. She stated that about 4 months ago her son had brought back Suraj Kumar from the parental house of Rubi Kumari.

13. Witness no. 2 Mahesh Kumar, brother of the complainant Vishnu Kumar stated that on the date of occurrence he was returning from Kashi and he saw his mother, sisters and brother Vishnu Kumar along with his nephew Suraj Kumar near bank of river Falgue. He has not uttered a single word that the



Officer-in-Charge took away any money from the pocket of the complainant and snatched his wrist watch. He has corroborated the other part of the allegation. In reply to court question, he also admitted that Rubi Kumari had already instituted a case against him and his family members.

14. Witness No. 3 Jitendra Kumar Singh stated that on 02.08.2010 at about 9.10 a.m., while he was near Khizarsarai bus stand, he saw Rubi Devi, Lalita Devi, Ramlakhan Sao and Madan Sao going together with the child Suraj Kumar. They went together with the child to the police station and after sometimes they left the police station. He stated that after about three hours, Vishnu Sao came crying and on inquiry, he stated that the child was forcibly taken away from him. In reply to court's question, he stated that since the accused persons are also residents of Khizarsarai, he could easily identify them.

15. Having perused the materials available on record, I find force in the submission made by the learned counsel for the petitioner.

16. There are enough materials on record to show that it was Rubi Kumari, mother of the so-called victim child Suraj Kumar, who had instituted a case relating to dowry demand against the complainant and his family members much prior to institution



of the present complaint and the complaint itself was instituted with ulterior motive due to private and personal grudge.

17. It would be evident from perusal of the complaint itself that initially, while the complaint was filed, the complainant made no statement that any other family member was present with him when the alleged incident took place. In the complaint, he stated that he was coming back to his native village after attending the Sradh Ceremony of wife of Kashi Sao but when he was examined on oath he stated that on the date and time of occurrence he was going to some other village from his native village. He clearly admitted in reply to the court question that Rubi Kumari, his brother's wife had already instituted a criminal case against him and his family members. He stated that the alleged occurrence took place at about 6 a.m. on 02.08.2010 whereas enquiry witness no.1 Hiramani Devi stated that she saw the occurrence at about 10 a.m. and witness no.3 Jitendra Kumar Singh stated that he saw the private accused persons going together with the child Suraj Kumar in the police station at 9.10 a.m. on 02.08.2010. These vital contradictions in the statements of the witnesses completely falsify the entire case of the complainant.

18. Furthermore, the independent witness Jitendra Kumar Singh has completely falsified the case of the complainant.



It would be evident from his statement that the victim child Suraj Kumar was all along with his mother Rubi Kumari right from the beginning. According to his statement, it was Rubi Kumari and others, who out of their own went to the police station along with the child first and three hours thereafter, the complainant met him. His statement also rules out the presence of the complainant at any point of time in the police station.

19. The learned Magistrate completely failed to appreciate that if the child was along with his mother as to how the complainant could have made any contradictory statement that the child was taken away forcibly from his possession. These material aspects which came in course of inquiry ought to have been considered by the learned Magistrate before issuing summons against the accused persons.

20. The learned Magistrate also failed to notice that the complainant did not state in his complaint that his family members were present with him. It is surprising as to how they all saw the occurrence when the incident took place at a lonely place near the bank of river Falgu.

21. The learned Magistrate also failed to notice that the mother of the complainant stated in her statement that her son Mahesh was with him at the time of occurrence whereas when



Mahesh made his statement in court, he stated that he reached at the place of occurrence alone when he was coming from Kashi.

22. The learned Magistrate also failed to notice that witness no.2 did not support the allegation of taking away of either cash or wrist watch from the possession of the complainant.

23. The duty of a Magistrate receiving a complaint is set out in Section 202 of the CrPC. The scope of inquiry under this Section is to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. It is well settled that summoning a person as an accused in a criminal case is a serious matter. Thus, the duty casts upon the Magistrate under Section 202 of the CrPC cannot be discharged in perfunctory manner. There is absolutely no scope for any casual approach in such matters.

24. I am of the considered opinion that in present case, the learned Magistrate has absolutely failed to apply his judicial mind to the materials available on record. He has mechanically issued the order summoning the petitioner in the most casual, cavalier and reckless manner. If the learned Magistrate would have applied his judicial mind to the facts of the case and the materials available on record, I am sure that he would have dismissed the complaint in exercise of powers conferred under



Section 203 of the CrPC.

25. I am constrained to record that the manner in which the summoning order has been passed, the very purpose and object of inquiry under Section 202 of the CrPC has been undermined. The code of judicial conduct requires a judicial officer to respect and comply with law. A judicial officer is supposed to be familiar with the ambit and scope of the provisions under which he exercises his power. The competent and conscience performance by a judicial officer is the most effective step to maintain respect for rule of law. The judicial officer is also required to maintain professional competence while exercising his power. I am of the opinion that the impugned order dated 28.02.2012 has been passed by the learned Judicial Magistrate in the most perfunctory manner. I say no more.

26. I am of the considered opinion that the instant vexatious complaint has been filed by the complainant in order to otherwise settle scores by setting the criminal law into motion, which is a pure abuse of process of law.

27. In view of the discussions made above, the application deserves to be allowed. Accordingly, the same is allowed. The impugned order dated 28.02.2012 passed by the learned Judicial Magistrate, 1st Class, Gaya in Complaint Case No.



1456 of 2010 is hereby quashed. Consequently, the entire proceedings arising out of Complaint Case No. 1456 of 2010 are also hereby quashed.

(Ashwani Kumar Singh, J.)

Kanchan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.05.2017
Transmission Date	23.05.2017

