

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.37204 of 2014

Arising Out of PS.Case No. -26 Year- 2013 Thana -PATNA GRP CASE District- PATNA

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Aditya Kumar Singh Son of Sri Youdh Shamsheer Singh Resident of Village -
Fatehpur, P.S. - Raghapur, District - Vaishali at present Gandhi Chowk, P.S. -
Town Hajipur, District- Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Shivesh Kumar Son of Not Known, MLA 195 Agiaon Bhojpur, District-
Bhojpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Anirudh Kumar Sinha, Adv.

For the Opposite Party No.2: Mr. S.D. Sanjay, Sr. Adv.

Mr. Rajiv Ranjan Tiwari, Adv.

For the Opposite Party No.1: Mr. B.N. Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 11-08-2017

The present case arises out of a Complaint filed by the

Opposite Party No.2 before the GRP, Patna City, Bihar, inter alia,

alleging therein that when on 01.02.2013 at about 9.50 P.M. he along

with his wife was travelling in Train No. 12352, some accused

persons came and sat in the front seat and started taking liquor as well

as engaged in dirty talks, whereupon the complainant told them to

maintain peace. Upon this the said accused persons got infuriated and

started talking in abusive language, whereafter a T.T.E, namely,

Jitendra came at that place, feigning ignorance and upon complaint

being made, he said that he was not on duty there. After the said



T.T.E. left the place, the accused persons started abusing and engaging in indecent behaviour with the wife of the complainant. The accused persons are said to have stated that they are Ticket Inspecting Officer, namely, Ajay and Pankaj and were resident of Barh, thus they would shoot them at Mokamah. Thereafter, upon a protest being made by the complainant, the accused persons present there including Pankaj and Ajay started beating the complainant and his wife as well as abused them. At that moment, one T.T.E., namely, Akhilesh Kumar had come there and had removed the said accused persons from the said place of occurrence.

2. On the basis of the aforesaid complaint dated 01.02.2013, Railway Police, Patna, Case No. 26 of 2013 dated 02.02.2013 was registered for the offences punishable under Sections 341, 323, 354, 307, 504 and 34 of the Indian Penal Code against Ajay, Pankaj and Akhilesh Kumar and 12 other unknown persons.

3. The police, after investigation, filed charge sheet against the accused persons, namely, (1) Pankaj Kumar Singh (2) Saurabh Singh (3) Akhilesh Kumar (4) Ajay Kumar son of Brijnandan Yadav (5) Ajay Kumar, son of Yogendra Prasad (6) Niraj Kumar (7) Zjzy kumar son of Surendra Chaudhary (8) Aditya Kumar Singh (9) Vishal Kumar (10) Aman alias Arunit Prabhat (11) Santosh Kumar amnd (12) Jitendra Kumar for the offences punishable under Sections



341, 323, 307, 354, 504, 506, 509, 510/34 of the Indian Penal Code and under Section 3(i) (x) (xii) of the SC/ST Act.

4. The learned court of Railway Judicial Magistrate, Patna by an order dated 28.06.2013/ 01.07.2013, upon perusal of the record at length, has taken cognizance only under Sections 341, 323, 354, 504/34 of the Indian Penal Code against all the accused persons, including the petitioner herein. The aforesaid order dated 28.06.2013/ 01.07.2013 is under challenge in the present petition.

5. The learned counsel for the petitioner has submitted that there is no specific allegation against the petitioner herein, it has been clarified by him in examination-in-chief during the course of departmental proceeding going on against him that the police had forcibly taken the signature on a plain paper and he has not given any confessional statement and that no T.I. Parade has been held till date. It is further submitted by the learned counsel for the petitioner that this Court by an order dated 24.07.2014 passed in Cr. Misc. No. 31 of 2014 has been pleased to quash the order dated 28.06.2013/ 01.07.2013 passed by the Railway Judicial Magistrate, Patna in Rail G.R.P. Patna (Patna Saheb) P.S. Case No. 26 of 2013, so far as the petitioner of that case, namely, Akhilesh Kumar is concerned, hence the connected FIR/ the order taking cognizance, as against the petitioner herein, should also be quashed.



6. Per contra, the learned Senior counsel appearing for the Opposite Party No.2 has submitted that bare perusal of the complaint petition as well as the materials on record, including the charge sheet would show the complicity of the petitioner herein in the alleged occurrence and this is not a case which should be taken lightly inasmuch as malpractice and misbehaviour on behalf of the employees/ staff/ personnel of the Railway department is increasing day by day and harassment of the passengers at their hands has been increasing as well as has remained unchecked, resulting in unsafe travelling by train. It has been further submitted by the learned Senior counsel appearing on behalf of the Opposite Party No.2 that the accused persons being railway employees ought to have been more responsible as well as they owe a duty towards the passengers, hence any indecent behaviour on their part cannot be tolerated and is liable to be dealt with iron hands so that in future such incidents do not reoccur. It has also been submitted that the case of the aforesaid Akhilesh Kumar, wherein this Court by an order dated 24.07.2014 has been pleased to quash the order taking cognizance, as against him, is distinguishable from the present case inasmuch as admittedly, as also as per the complaint petition, the said accused person, namely, Akhilesh Kumar, was instrumental in removing the aforesaid accused persons, who were engaging in indecent behaviour from the alleged



place of occurrence, hence the case of the petitioner herein, who is said to have been drinking and abusing/ engaging in indecent behaviour with the Opposite Party No.2 and his wife cannot be equated with the aforesaid Akhilesh Kumar. It is pointed out that though the order taking cognizance has been quashed as against the aforesaid Ahilesh Kumar, this Court has recommended to the authorities with regard to appropriately dealing with the petitioner departmentally for dereliction of duty.

7. Lastly, it is submitted that the powers of this Court for quashing the order under Section 482 Cr. P.C. is limited and the only principles on which a case can be quashed are firstly if the prosecution is mala fide, which is not the case herein, and secondly, if no cognizable offence is made out, which is also not the case here, hence, the present application is fit to be dismissed.

8. Having regard to the facts and circumstances of the case and having gone through the entire case diary of the case, which was called for by this Court by an order dated 14.10.2016, I find that there are ample material on record to constitute a cognizable offence against the petitioner herein, so as to proceed against him and moreover, upon a detailed investigation, the police has filed charge sheet against the petitioner herein and other accused persons. As far as the reference to the deposition of the petitioner in the departmental



proceeding is concerned, the same has got no evidentiary value in the present proceedings, though the same would bear it out that the presence of the petitioner in the said train on the date and time of occurrence is admitted by the petitioner herein. The argument of no T.I. Parade having been conducted is also an argument in desperation inasmuch as a trial is not being conducted by way of the present proceeding and the same may be a good defence during the course of trial, but the same can definitely not be a ground for quashing of the present proceeding specially in a case where ample materials are available on record for proceeding in the present case against the petitioner and other accused persons. I further find from perusal of the entire material on record that a prima facie case is definitely made out against the petitioner and other accused persons, hence the learned Railway Judicial Magistrate, Patna has rightly passed the order dated 28.06.2013/ 01.07.2013 in Rail (GRP) Patna (Patna Saheb) P.S. Case No. 26 of 2013 taking cognizance against the petitioner as well as other accused persons for the offence punishable under Sections 341, 323, 354 and 504/34.

9. As far as the reliance on an order dated 24.07.2014, passed by this Court in the case of Akhilesh Kumar, is concerned, the same is completely distinguishable in the facts and circumstances of the present case, as pointed out by the learned Senior counsel for the



Opposite Party No.2, hence no benefit can be derived from the same.

10. I may hasten to add that this is not a case which falls under the categories of cases enumerated by the Hon’ble Supreme Court of India in its judgment reported in *1992 Supp (1) SCC 336* **State of Haryana vs. Bhajan Lal**, so as to warrant exercise of power by this Court under Section 482 Cr. P.C.

11. For the reasons stated above, there is no merit in the present application and, accordingly, the same is dismissed.

12. There shall be no order as to costs.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	09-08-2017
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