

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.45178 of 2013

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

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Anil Kumar, Son of Ram Pravesh Prasad, resident of Village Sanpura, P.S. Dhanarua, District Patna At present resident of Mohalla Indira Nagar Road No. 04, P.O. G.P.O. P.S. Jakkanpur, District Patna.

.... Petitioner

Versus

1. The State of Bihar.
2. Ajeet Rai, Son of Late Triyugi Rai @ Jogi Rai, resident of Village Dariapur, P.S. Naubatpur, District- Patna.

.... Opposite Parties

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Appearance:

For the Petitioners : Mr. Arvind Kumar Sinha, Advocate.
For the State : Mr. Pradip Nr. Kumar (App)
For the Complainant : M/S. Anil Kumar Singh and Pravin Kumar,
Advocates.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL JUDGMENT
Date: 12-01-2017

Heard learned counsels for the petitioners, complainant and learned counsel for the State.

2. The present application has been filed for quashing of the order dated 16.08.2010, passed by the learned Judicial Magistrate-Ist Class, Danapur, Patna, in connection with Complaint Case No. 804(C) of 2010, by which after taking cognizance the process has been issued for an offence under Section 379/34 of the IPC.

3. The prosecution story, in brief, is that the father of the complainant met with an accident, in which he died. The petitioners being lawyers had assured to contest his case. From time to time, his



legal fee also was being paid by the complainant. Ultimately, the complainant succeeded in the claim case and Rs. 2,57,319/- was awarded as a compensation. It is further alleged that the petitioners had committed theft of a blank cheque of the complainant on 04.06.2010. Regarding the same, the complainant had filed a Sanha No. 251 dated 10.04.2010. Later on again, another Sanha was also filed which was numbered as 890 dated 21.05.2010.

4. It has been submitted on behalf of the learned counsel for the petitioners that the present case is a malafide prosecution. From bare perusal of the complaint case, it is evident that in paragraph no. 4 of the complaint petition, the date of occurrence is alleged to be 04.06.2010 regarding theft of cheque in question. Prior to the occurrence taking place, a Sanha was filed on 08.04.2010 and 10.04.2010 regarding theft of cheque in question. This is sufficient to show that the present criminal proceeding is manifestly accompanied with the malafide and a malicious prosecution with an ulterior motive.

5. It has been submitted on behalf learned counsel for the opposite party no. 2 that from bare perusal of the complaint case, offence under Section 379/34 of the IPC is made out and the learned court below has rightly issued the process after taking cognizance against the petitioners.

6. I have heard learned counsels for the parties and perused



the materials available on record.

7. From perusal of the complaint case, it has rightly been pointed out on behalf of the petitioners that the present prosecution is a malafide prosecution for an ulterior motive with a malicious intention.

8. Considering the aforesaid facts and circumstances, it is a fit case where the order dated 16.08.2010, requires interference. In that view of the matter, the impugned order dated 16.08.2010 as well as Complaint Case No. 804 (C) of 2010 and the entire proceedings arising therefrom, are hereby quashed.

9. The application stands allowed.

(Sudhir Singh, J)

U.K./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.02.2017.
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