

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.49496 of 2013

Arising Out of PS. Case No.-3327 Year-2012 Thana- PATNA COMPLAINT CASE District-
Patna

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CHANDRA KANT ANIL (C.K. ANIL) S/O LATE DEO NANDAN RAI
RESIDENT OF S.D.O. ROAD, P.S.- KHAGARIA, P.O.- KHAGARIA,
DISTRICT- KHAGARIA, PRESENTLY POSTED AS MEMBER OF
INDIAN ADMINISTRATIVE SERVICES, GOVT. OF BIHAR, PATNA

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Ram Kalewar Prasad Singh S/O Ram Jatan Singh Resident Of Village-
Sultanpur West, P.S.- Mohiuddin Nagar, District- Samastipur

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar, Advocate
For the Opposite Party/s	:	Mr. Y.V. Giri, Sr. Advocate
	:	Mr. Ashish Giri, Advocate

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 04-04-2018

This application under Section 482 of Cr.P.C.

has been filed for quashing the order dated 29.01.2013 in
Complaint Case No. 3327 (C) of 2012 by which the learned
Judicial Magistrate, 1st Class, Patna has taken cognizance under
Sections 323, 341, 379, 504, 506 of the Indian Penal Code.

2. The complainant-opposite party No. 2 has filed a
Complaint Case in the court of C.J.M., Patna, stating therein
that the complainant alongwith other Directors of Bihar State
Co-operative Marketing Union (BISCOMAUN) went to the
chamber of the Chairman of BISCOMAUN , Patna at about
11:30 AM on 03.12.2012 where the complainant found that the



chamber of Chairman and his Personal Secretary is locked.

3. Complainant informed the Chairman that his chamber is locked. At about 12.15 PM the Chairman reached his office and ordered one of the employees of BISCOMAUN, namely, Hari Narayan Keshri to unlock his chamber, who unlocked his chamber but he expressed his inability to unlock the chamber of his Personal Secretary by saying that the key of said chamber is with the petitioner (accused).

4. After unlocking of the chamber when the Chairman entered into his chamber he found that the computer of his chamber, files and some other costly items were not available in his chamber. The Chairman immediately wrote a letter to the Managing Director to return the computer and files of his chamber and to deploy the employees of his cell. After some time when the staffs of the cell could not be deployed then the Chairman contacted the Managing Director (petitioner) on official intercom phone who used abusive language with the Chairman and other Directors.

5. The complaint petition was transferred to the Court of Judicial Magistrate and the learned Judicial Magistrate, 1st Class, Patna after conducting inquiry under Section 202 Cr.P.C. in which the complainant was examined on S.A. and



other inquiry witnesses were also examined and on the basis of said enquiry formed prima facie case to be made out against petitioner and took cognizance against petitioner under Sections 323, 342, 353, 379, 504, 506 of the Indian Penal Code.

6. It has been submitted on behalf of the petitioner that he is a Senior I.A.S. Officer of Bihar cadre and at the relevant time was the Managing Director of BISCOMAUN and present complaint petition has been filed as a retaliation of case lodged by him against the complainant in Gandhi Maidan P.S. Case No. 367 of 2012 dated 08.11.2012 under Sections 406 and 420 of I.P.C.

7. The allegations levelled against the petitioner are false. The petitioner through his lawyer sought an information from the present Managing Director, BISCOMAUN as to the present location of computer and files lying in the chamber of Chairman and petitioner was informed that computer is installed in the chamber of Chairman which prima facie establishes that the complaint is vexatious and false.

8. It has been further submitted by the petitioner that at the relevant time he was Managing Director of BISCOMAUN and in course of his official duty he had shifted the computer of the Chamber of Chairman in accounts section



when the office of Chairman was vacant due to election.

9. It has further been submitted that all allegations alleged against the petitioner were in discharge of his official duty, as such, necessary sanction of the State Government under Section 197 of Cr.P.C. was not obtained and in absence of which no cognizance could be taken against the petitioner.

10. After going through the complaint petition, statement of complainant on S.A. and statement of enquiry witnesses and materials available on record, it is to be examined whether the order taking cognizance by the Judicial Magistrate under Sections 323, 341, 353, 379, 504 and 506 of I.P.C. is sustainable.

10. The submission of petitioner is that all allegations as complained is with respect to discharge of his duty in official capacity, as such sanction of the State Government under Section 197 of Cr.P.C. was mandatory by the trial court before taking cognizance of the offence. The trial court has held that the act done by the petitioner was not in discharge of his official duty, hence no sanction under Section 197 of Cr.P.C. was required.

11. The alleged action constituting the offence said to have been committed by the Public Servant must have a



reasonable and rational nexus with the official duties required to be discharged by such public servant. The finding of trial court regarding sanction under Section 197 of Cr.P.C. is correct and this Court also concurs with the view of the trial court that no sanction of the State Government under Section 197 is required as the act done or purported to be done cannot be said to be done in official capacity or in discharge of official duty.

12. Cognizance has been taken under Sections 323, 341, 379, 504, 506 of I.P.C. It is to be examined whether necessary ingredients in order to constitute offences under said sections of I.P.C. is present in this case or not.

13. Cognizance has been taken under Section 323 of the I.P.C. against the petitioner. Section 323 of the I.P.C. reads as follows:-

Section 323. whoever, except in the case provided for by Section 334, voluntarily causes hurts shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees or with both.



14. An offence under Section 323 has following ingredients.

- (i) that the accused caused hurt to another person.*
- (ii) That he caused such hurt voluntarily*
- (iii) That such a case was not covered under Section 334 I.P.C.*

Hurt had been defined under Section 319 of I.P.C. which reads as follows:-

Section 319- whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

“Voluntarily to cause hurt” has been defined under Section 321 of I.P.C.

Section 321- whoever does any act with intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said: voluntarily to cause hurt.

15. In the present case complainant or his witness no



where have stated that complainant suffered bodily pain disease or infirmity. No complaint of having suffered any injury has been made by complainant. The allegation of assault is vague and not specific and it does not disclose means of assault or part of body where he was assaulted. There is no allegation of suffering even simple injury by complainant. The complaint petition does not disclose any intention or knowledge of accused to cause voluntarily hurt to complainant.

16. The complainant in his S.A. has stated about abusive language being used by petitioner. No allegation of any assault on complainant has been levelled against petitioner. Complainant has suffered no hurt. All witnesses have stated regarding exchange of Hot words between parties. None has stated that complainant sustain any injury or hurt. Allegation is of using abusive language by petitioner.

17. None of the ingredients are present in complaint petition or S.A. of complainant and statement of enquiry witnesses in order to constitute offence under Section 323 of I.P.C.

Section 341 of the Penal Code prescribes punishment for 'wrongful restraint'. The word 'wrongful restraint' has been defined under section 339 of the Penal Code which read thus:



“339 Wrongful restraint.-

*Whoever voluntarily obstructs
any person so as to prevent
that person from proceeding in
any direction in which that
person has a right to proceed,
is said wrongfully to restrain
that person.”*

*From a bare reading of the definition of the
word ‘wrongful restraint’ it would appear that it
means keeping a man out of place where he
wishes to be and has a right to be. The word
‘wrongful restraint’ implies abridgment of a
person against his will. There is no allegation in
the present case that the petitioner, in any way,
created obstruction or prevented the informant
from proceeding in a direction in which he had a
right to proceed. In that view of the matter, the
essential ingredients to constitute an offence
punishable under section 341 of the Penal Code
are completely missing in the present case.*

Cognizance has been taken under Section 379 of I.P.C.



against the petitioner. Section 379 of I.P.C. reads as follows:-

Section 379- Punishment for theft.- Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

18. In order to constitute an offence of theft a person must remove movable property out of possession of another dishonestly and without that person's consent. The intention of the accused is to take property which is in possession of a person out of that person's possession. The articles of which theft is alleged were not in possession of complainant as such there cannot be any theft committed by petitioner. It has been submitted by petitioner that in course of official duty he shifted the computer from the chamber of Chairman in account section when the office of Chairman was vacant due to election. However, computer was installed in the chamber of Chairman subsequently.

19. None of the essential ingredients are present in complaint case in order to constitute offence under Section 379 of I.P.C.

10. Section 353 of the Penal Code



prescribes punishment for assault or criminal force to deter public servant from discharge of his duty. The essential ingredients of section 353 of the Penal Code are as follows:-

- (i) There must be assault or use of criminal force;*
- (ii) such assault or use of criminal force must have been made on a public servant; and*
- (iii) It must have been on a public servant*
 - (a) while he was acting in execution of a duty; or*
 - (b) with intent to prevent or deter that person from discharging his duty as public servant;*
- or*
- (c) in consequence of anything done or attempted to be done by him in the lawful discharge of his duty.*

In the present case it would appear from the allegations made in the complaint that there is nothing to show that the petitioner either assaulted or used any criminal force to deter the complainant from discharge of his duty and, hence, the ingredients of Section 353 of the



Penal Code would also not be attracted.

Cognizance has been taken is Section 504 of the Penal Code which prescribes punishment for intentional insult with intent to provoke breach of peace. The essential ingredients of section 504 of the Indian Penal Code are (a) there must be intentional insult; (b) the insult must be such as to give provocation to the person insulted; and (c) the intention that such provocation should cause, or the knowledge that such provocation was likely to cause, the person so insulted to break the public peace or to commit any other offence.

13. It would be apparent from the above discussion that a person would come within the ambit of Section 504 of the Penal Code if the provocation offered by him is of such a character as to cause the person provoked to break public peace or to commit any other offence. There is no such allegation in the present case, as such no offence under Section



504 is made out.

14. Cognizance has been taken under Section 506 of the Indian Penal Code which prescribes punishment for 'criminal intimidation'. The word 'criminal intimidation' has been defined under section 503 of the Penal Code which reads us under: "503. Criminal intimidation.- Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation."

15. The section is in two parts. The first part refers to the act of threatening another with any injury to his person, reputation or property or to the person or reputation of any one in whom that person is interested, while



the second part refers to the intent, with which threatening is done.

16. None of the ingredients of Section 503 of the Penal Code are attracted in the facts and circumstances of the present case and hence the petitioner could not have been booked for an offence under section 506 of the Penal Code.

20. After hearing the parties and perusing the complaint petition, S.A. of complainant and statements of enquiry witnesses, it appears that dispute was of trivial and minor nature lacking necessary ingredients in order to constitute any criminal offence.

Section 95 of I.P.C. reads as follows:-

Section 95.- Nothing is an offence by reason that it causes, or that it is intended to cause or that it is known to be likely to cause, any harm, if that harm is slight that no person of ordinary sense and temper would complain of such harm.

21. The newly elected Chairman had a grudge against the petitioner because of lodging of FIR against him although said FIR was subsequently quashed by this Court. The Chairman was reelected and when he went in his office to



assume charge ugly scene was created which ought to have been avoided by petitioner. Petitioner as well as Chairman of BISCOMAUN are holding high post and stature in society as such they should show restrain, maturity and modesty in their behaviour and temperament.

22. For the reasons as stated above, the order dated 29.01.2013 passed in Complaint Case No. 3327 (C) of 2012 passed by learned Judicial Magistrate 1st class, Patna taking cognizance under Sections 323, 341, 379, 504, 506 of the Indian Penal Code as well as whole proceeding arising out of said complaint case is quashed.

23. The petition stands allowed.

(S. Kumar, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

