

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.21247 of 2011

Arising Out of Complaint Case No. -492Year- 2010 Thana –Agrer District- SASARAM (ROHTAS)

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1. Sunil Kumar, son of Late Sri Krishna, resident of M.I.C. H-250, Kankarbagh, Patna-20 at present D.E.O. Rohtas.
 2. Karun Kumar Sinha, son of Late Sheo Kr. Pd. Singh, village-New Dasratha, P.S.-Anisabad, Gardanibagh, Patna.

.... Petitioners

Versus

1. The State of Bihar
2. Rameshwar Singh, son of Late Bechan Singh, village-Mokar, P.S.-Agrer, District-Rohtas.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Ramakant Sharma, Sr. Advocate
Mr. Rajesh Kumar, Advocate
For the Opposite Party No.2 : Mr. Ranjeet Kumar, Advocate
Mr. Jai Kishore Sharma, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 04-01-2018

Heard Mr. Ramakant Sharma, learned Senior Advocate for the petitioners and Mr. Ranjeet Kumar, learned counsel for the opposite party no.2

2. This application under Section 482 of the Code of Criminal Procedure (for short 'Cr. P.C.') has been filed for quashing the order dated 20.05.2011 passed by the learned Chief



Judicial Magistrate, Rohtas at Sasaram in Complaint Case No.492 of 2010 by which the petitioners have been summoned to face trial for the offence punishable under Section 420 of the Indian Penal Code.

3. The opposite party no.2 lodged a written complaint in the court of Chief Judicial Magistrate, Rohtas at Sasaram on 22.04.2010 stating therein inter alia that he is a teacher of Shankar Primary-cum-Middle Sanskrit School, Mokar and witnesses are Headmaster, teachers and the Secretary of the school. The accused persons in conspiracy with each other in order to cheat the complainant and the witnesses inspected the school on 17.12.2009 and demanded Rs.50,000/- each from the complainant and the witnesses as process fee for making payment of their salary pursuant to the order passed by the High Court in C.W.J.C. No.3324 of 2009. It is stated that vide order dated 01.05.2009 passed in C.W.J.C. No.3324 of 2009, a direction was given by the High Court for payment of salary to the teachers right from 2009, but in utter disregard to the order, payments were not made and instead thereof Rs.50,000/- each from six teachers amounting to Rs.3 lacs was taken on the pretext that the same is required as expenditure. The said money was paid on assurance that payment of salary will be made with effect from April, 2010. It is alleged that



after receiving the aforesaid amount of money, the petitioners neither made payment of salary to the complainant and other teachers nor returned the money. When the complainant along with Secretary of the school went to the office of the petitioner no.1 to inquire about the matter, they were abused and threatened with dire consequences.

4. On the basis of the above allegations, it is stated that the petitioners induced the complainant and the witnesses to make payment of money for releasing their salary and after receiving the amount, they cheated them.

5. The statement of the complainant was taken on oath and in course of inquiry, three witnesses namely, Tej Narain Mishra, Madan Pandey and Kripa Shankar Tiwari were examined on 21.07.2010, 27.08.2010 and 30.09.2010 respectively.

6. After completing the inquiry conducted under Section 202 of the Cr. P.C., the petitioners were summoned to face trial for the offence punishable under Section 420 of the Indian Penal Code vide order dated 20.05.2011.

7. The aforesaid order dated 20.05.2011 is under challenge in the present application.

8. Assailing the impugned order, Mr. Ramakant Sharma, learned Senior Advocate appearing for the petitioners



submitted that the instant case has been filed by the complainant with oblique motive. He submitted that in C.W.J.C. No.3324 of 2009, the writ petitioner Madan Pandey (one of the witnesses of the complaint petition) succeeded in getting order by suppressing the material facts. When the order was brought to the notice of petitioner no.1, who was the then District Education Officer, Sasaram, an opinion of the learned Advocate General was sought and, after obtaining his opinion, the department granted permission for filing review petition. Pursuant to the order of the department, a review petition vide Civil Review No.196 of 2010 was filed before this Court for review of the order dated 01.05.2009 passed in C.W.J.C.3324 of 2009. In the meantime, the writ petition filed M.J.C. No.1513 of 2010 alleging disobedience of the order passed by the Court and in course of hearing of the contempt petition, it was brought to the notice of the Court that a Civil Review petition was filed as writ petitioner had not brought appropriate facts to the notice of the Court. Having considered the submissions on behalf of the parties, the Court directed the District Education Officer, Rohtas to pass a fresh reasoned order. He submitted that in M.J.C. No.1513 of 2010, vide order dated 14.09.2011, this Court directed for addition of the Special Director (Secondary Education) as opposite party no.5 and he was directed to file show cause. Thereafter, the



Special Director himself inquired into the issue and filed a show cause whereafter, the contempt petition was disposed of accepting the show cause filed by the Special Director vide order dated 23.11.2011. He submitted that since the petitioners were seriously contesting the matter and were highlighting the mischief played by the petitioners before the Court, a malicious complaint was filed against them just in order to coerce them so that they may succumb to the pressure and make payment of salary to the complainant and the witnesses. He submitted that the instant complaint case is also bad for the reason that no sanction for prosecution has been obtained against the petitioners, who were discharging their official duty while inspecting the school. He submitted that from the evidence of the complainant and witnesses, it would be manifest that there is no chit of paper to support that any amount was ever paid by the complainant or the witnesses to the petitioners and save and except the wild ocular allegation, there is no other corroborative material to show that any amount was ever paid to the petitioners.

9. On the other hand, learned counsel appearing for the complainant-opposite party no.2 submitted that the complainant has clearly alleged in the complaint that the petitioners took Rs.3 lacs from the complainant and five teachers in the name



of process fee for payment of salary to the complainant and other teachers and after receiving Rs.50,000/- from each of them, they failed to make payment of salary to them. When the complainant and the witnesses approached the petitioners in this regard, they not only refused to return the money but also abused and threatened them with dire consequences. He submitted that these allegations would clearly attract the ingredients of the offence punishable under Section 420 of the Indian Penal Code. According to him, in the light of the allegations made in the complaint and taking into consideration the statement of witnesses, the learned Magistrate rightly summoned the petitioners to face trial for the offence punishable under Section 420 of the Indian Penal Code. He contended that the defence taken by the petitioners can be examined only during trial and not at this stage.

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

11. It would be evident from the materials brought on record that save and except oral allegation of payment of Rs.50,000/- each by the complainant and five others to the petitioners, there is no other corroborative material to show the payment. The unimpeachable documents brought on the record would also make it evident that the issue of payment of salary to the



complainant and witnesses was being seriously contested by the District Education Officer, Rohtas before this Court.

12. I find substance in the submission of learned Senior Advocate appearing for the petitioners that as the District Education Officer, Rohtas was not yielding to the pressure put by the complainant and witnesses for payment of salary, a malicious complaint was instituted against the petitioners just in order to coerce them. In the background of the facts noted above, in the opinion of this Court, allowing such a prosecution to continue would amount to an abuse of the process of the Court.

13. Accordingly, the impugned order dated 20.05.2011 passed by the learned Chief Judicial Magistrate, Rohtas at Sasaram in Complaint Case No.492 of 2010 is quashed.

14. The application stands allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.01.2018
Transmission Date	11.01.2018

