

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.40386 of 2013

Arising Out of PS.Case No. -50 Year- 2007 Thana -GOVERNMENT OFFICIAL COMP. District - -

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1. Sri Ramavtar Jha S/O Late Janaklal Jha Resident Of Village- Harri, P.S.- Andhra Tharhi (New P.S.- Rudrapur), District- Madhubani

.... Petitioner/s

Versus

1. The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shashi Nath Jha, Adv.

For the Opposite Party/s : APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 22-02-2018

Heard learned counsel for the petitioner and learned APP

for the State.

2. This application has been filed for quashing the order of cognizance dated 29.11.2010 passed by learned Judicial Magistrate-1st Class, Jhanjharpur (Madhubani) in Jhanjharpur non-FIR case No. 298 of 2007 and also the order dated 17.01.2012 by which charge has been framed against the petitioner under Section 182 and 211 of the Indian Penal Code.

3. Counsel for the petitioner has submitted that initially the petitioner had filed a complaint which was sent to police station.



The Police registered Andhra Thari P.S. Case No. 20/2007 dated 15.02.2017 under Sections 147, 148, 149, 341, 342, 323, 504, 506 of the IPC. The police after investigation submitted final form in the case, holding that the case instituted by the petitioner was false. The aforesaid final form submitted by the police, was accepted by the learned A.C.J.M., Jhanjharpur by the order dated 14.05.2008 (Annexure-5). Thereafter, the I.O. has filed a petition before the ACJM on 22.06.2007 for initiating proceeding under Section 182/211 of the Indian Penal Code against the petitioner, who was informant in Andhra Thari P.S. Case No. 20 of 2007 arising out of C.R. No. 640 of 2005.

4. The court below by the impugned order dated 29.11.2010 took cognizance against the petitioner under Section 182/211 of the IPC and the case was transferred to the court of the Judicial Magistrate, 1st Class, Jhanjharpur for trial. Subsequently the Judicial Magistrate, vide order dated 17.01.2012 framed charge against the petitioner for offence under Section 182/ 211 of the IPC.



5. Both the aforesaid orders are under challenge.

6. Counsel for the petitioner has submitted that in terms of Section 195 of Cr.P.C. the complaint case was maintainable and taking cognizance by learned Magistrate on the basis of written report submitted by the police dated 22.06.2007 was invalid. In support of such submission, he relied upon a decision of this Court in the case of ***Bir Bahadur Singh Vs. State of Bihar*** reported in **2007 (4) PLJR-510**.

7. The counsel for the petitioner also relied on the decision in the case of ***Mukti Narayan Gir Vs. Emperor*** reported in **AIR 1940 Pat 97** and has submitted that the failure of complainant to prove his case is not the same thing as the institution of a maliciously false case so as to make him liable for an offence under Section 211 IPC.

8. Learned APP has appeared and submitted that there is no illegality in the order passed by the court below.

9. This Court after looking into the lower court record



and hearing the submission of the learned counsel for the parties finds that final form was accepted by the court below on 14.05.2008. The ACJM had directed the office concerned to deposit the record of the case in the Record Room. The final form submitted by the police has been enclosed as Annexure-‘3’ wherein it is mentioned that case was found false, therefore, final form was submitted and recommendation was made for initiating proceeding against the petitioner under Section 182/211 IPC .

10. Learned Magistrate at the time of accepting final form on 14.05.2008, did not pass any order to take cognizance under Sections 182/211 of IPC, although the I.O. of case had already recommended by letter dated 22.6.2007 for initiation of case against the petitioner under Section 182/211 of IPC. The court below after accepting the final form, on 24.5.2008, took cognizance against the petitioner under Section 182/211 IPC on the basis of letter dated 22.06.2007 filed by the I.O. of the case by order dated 29.11.2010.

11. The F.I.R. was filed for the offence under Sections



147, 148, 149, 341, 342, 323, 504 and 506 IPC. The counsel for the petitioner has submitted that punishment under these sections are not more than three years but the court has taken cognizance against the petitioner by order dated 29.11.2010, after expiry of three years from the date of filing of prosecution report by the I.O dated 22.6.2007 which is beyond the period of limitation prescribed under Section 468 Cr.P.C.

12. Counsel for the petitioner further submitted that title suit is already pending between the parties for the same land vide Title Suit No. 221 of 2016.

13. In such circumstances, the impugned order dated 29.11.2010 and 17.01.2012 passed by the court below are not in accordance with law. Accordingly, the impugned orders along with entire criminal proceeding against the petitioner is hereby quashed.

14. This Criminal Miscellaneous application is allowed.

(Sanjay Priya, J)

sushma/-

AFR/NAFR	NAFR
CA V DATE	N.A.
Uploading Date	10.03.2018
Transmission Date	10.03.2018

