

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.38830 of 2014

Arising Out of PS. Case No.-963 Year-2003 Thana- AURANGABAD COMPLAINT CASE
District- Aurangabad

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Rajesh Sharan Son of Late Murari Sharan Shrivastava resident of Flat No. 102, Manglam Bihar Apartment, Ara Garden Road, Jagdeo Path, Patna presently posted as sub-Inspector of police, S.P. Office Munger, District - Munger.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Nand Kishore Pandey Son of Late Gobardhan Pandey resident of village - Ub, P.S. - Obra, District - Aurangabad.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Vijay Shankar Shrivastava
For the Opposite Party/s : Mr. ASHOK KR.SINGH NO.1(APP)

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date : 06-02-2018

Heard learned counsel for the petitioner, learned APP for the State as well as learned counsel appearing on behalf of opposite party no.2.

2. The petitioner seeks quashing of the cognizance order dated 23.08.2005, passed by learned Judicial Magistrate, 1st Class, Aurangabad in Complaint Case No.963 of 2003 thereby taking cognizance of the offence under Sections 448, 323, 504 and 379 of the Indian Penal Code.

3. Learned counsel for the petitioner submits that the petitioner was S.H.O. at the relevant point of time in Obra police station in the district of Aurangabad. Ten days prior to the



institution of the complaint, petitioner being a police officer while checking vehicles found the son of the complainant going on a motorcycle. The son of the complainant was asked to stop but leaving the motorcycle he escaped away and from the dickey of the vehicle the owner book was found in the name of some other person though the local people present there had identified the son of the complainant, so suspecting a case of stolen motorcycle Obra P.S. Case No.131 of 2003 was instituted against him. In retaliation the present complaint was filed by the father of the accused of the said Obra P.S. Case No.131 of 2003 alleging that the petitioner came to his house with police personnel, abused his son and other female inmates of the house and also kept theft of Bajaj Caliber bearing Registration No. BR1U 9726. The prosecution case is itself absurd and improbable in the sense that already that motorcycle was seized by the police ten days prior to the complaint case. With false allegation the complaint was filed and the petitioner was purporting to discharge his duty in the official capacity, so sanction becomes mandatory for taking cognizance against a public servant in such situation under Section 197 Cr.P.C. but no such sanction has been obtained whereas learned counsel appearing on behalf of the complainant submits that at the behest of a person, with whom the complainant was on inimical terms the



false FIR was lodged by the petitioner and in the said case the accused was acquitted.

4. Having considered the rival submissions of the parties and on perusal of the records, the Court finds that the allegation appears frivolous as well as improbable for the reason that ten days prior to the present complaint dated 30.09.2013 the petitioner, a police officer, had instituted FIR against the son of the complainant suspecting the vehicle he was riding and left, during vehicle being checked so it was suspected to be stolen one, therefore, Obra P.S. Case No.131 of 2003 was lodged on 20.09.2013, so there is no question of committing theft of the said motorcycle by the petitioner after ten days from the house of the accused, so the case of the complainant is inherently improbable in itself. Moreover, the petitioner is a public servant and being made accused of an offence alleged to have been committed while acting or purporting to act in discharge his official function and gone for the investigation of the said case but no sanction under Section 197 Cr.P.C. has been obtained before taking cognizance from appropriate authority, so on this account also the impugned order taking cognizance is bad in law, hence the impugned order taking cognizance dated 23.08.2005, passed in Complaint Case No.963 of



2003 by learned Judicial Magistrate, 1st Class, Aurangabad is hereby quashed.

5. The quashing application stands allowed.

(Arun Kumar, J)

S.KUMAR/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.02.2018
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