

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.2316 of 2016

Arising Out of PS.Case No. -543 Year- 2013 Thana -GOPALGANJ COMPLAINT CASE District-
GOPALGANJ

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Dhananjay Kumar, Son of Shri Raghunath Prasad Chaudhary, Resident of Village-
Kumbhiya Bishunpurwa, P.S Bagaha, District West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Prem Kumar Kedia, S/o late Rameshwar Prasad, Resident of Village- Main
Raod, ward No. 16, P.S. + District Gopalganj.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Anand Kishore Choudhary, Advocate.

For the Opposite Party/s : Mr. Binay Krishna, Spl. P.P. SC/ST (POA) Act.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 14-09-2018

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 5.4.2014 passed by learned Chief Judicial Magistrate, Gopalganj, in Complaint Case No. 543 of 2013, Trial No. 1050 of 2015 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioner for the offences under Section 385 of the Indian Penal Code.

2. Heard learned counsel for the petitioner and State.

3. Counsel for the petitioner submits that he has been made accused in this case only because he has lodged case of electricity theft against the complainant and others on the basis of



which Gopalganj P.S. Case No. 59 of 2013 was registered. Counsel for the petitioner further submits that no ingredient of Section 385 Indian Penal Code is made out against the petitioner.

4. Notice was issued to the opposite party No. 2 which has been validly served. The opposite party No. 2 has appeared by filing Vakalatnama, but none appeared on his behalf during course of hearing.

5. In the complaint petition it is alleged that on 12.02.2013 the petitioner went to the establishment of the complainant. For the said establishment, the complainant has taken legal and valid electric connection. He had also deposited necessary Bill in February, 2013. It is further alleged that the petitioner claiming himself to be the Assistant Engineer of Electricity Department, demanded Rs.10,000/- from the complainant. Petitioner gave threat to the complainant to implicate in electricity theft case. The complainant was also threatened of closure of his establishment. It is also alleged that on 15.02.2013 an electricity theft case vide Gopalganj P.S. Case No. 59 of 2013 was instituted for the offence under Section 135 of Electricity Act and Section 379 of Indian Penal Code, although, the electric meter in the campus of the complainant was functional.

6. The aforesaid First Information Report has been enclosed as Annexure-3. The instant complaint has been filed on



7.3.2013.

7. In the complaint petition it is mentioned that prior to filing of the instant complaint, the case of electricity theft has already been filed by the petitioner against complainant and others vide Gopalganj P.S. Case No. 59 of 2013. From perusal of the aforesaid First Information Report, it appears that on the date of occurrence, the petitioner has conducted raid in different premises including premises of the complainant and found committing electricity theft by connecting *toka*, causing loss of Rs.30,672/- to the Electricity Department. The case was lodged against the complainant by the petitioner of the instant case on 14.02.2013.

8. The instant complaint has been filed by the complainant on 7.3.2013 showing the occurrence to be dated 12.02.2013. The complainant has also mentioned in the complaint petition that the case of electricity theft has already been filed against the petitioner by the complainant on 15.02.2013 vide Gopalganj P.S. Case No. 59 of 2013.

9. The court below after recording S.A. of the complainant and statement of two witnesses has found *prima facie* case against the petitioner for the offence under Section 385 of the Indian Penal Code.

10. This Court finds that the court below has passed



impugned order in mechanical manner without applying his judicial mind.

11. From the allegation in the complaint petition, it appears that there is no ingredient of offence under Section 385 Indian Penal Code. The impugned order passed by the court below is not in accordance with law.

12. Therefore, the impugned order dated 5.4.2014 passed by learned Chief Judicial Magistrate, Gopalganj, in Complaint Case No. 543 of 2013, Trial No. 1050 of 2015 along with the entire criminal proceeding against the petitioner, is hereby quashed.

13. This Criminal Miscellaneous application is accordingly allowed.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	24/09/2018
Transmission Date	24/09/2018

