

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.17861 of 2016

Arising Out of PS. Case No.-373 Year-2004 Thana- JAHANABAD District- Jehanabad

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1. Mahabir Prasad, aged about-72 years, S/o Guru Prasad, resident of Prantika Apartments Sonari, Dumohani, Jamshedpur, P.S.- Sonari, District- East Singhbhum
 2. Manish Prasad @ Raju, aged about 38 years, S/o Mahabir Prasad Singh, resident of Prantika Apartments Sonari, Dumohani, Jamshedpur, P.S.- Sonari, District- East Singhbhum
 3. Ashish Prasad @ Jhunnu, aged about 36 years, S/o Mahabir Prasad, resident of Prantika Apartments Sonari, Dumohani, Jamshedpur, P.S.- Sonari, District- East Singhbhum

... .. Petitioner/s

Versus

1. The State of Bihar
2. Dilip Kumar, S/o Late Sri Ram Sao, Resident of village- Jehanabad, Mohalla- Ramjash, P.S.- Jehanabad, District- Jehanabad

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Rama Kant Singh, Advocate
		Mr. Kumar Shankaram, Advocate
For the Opposite Party/s	:	Mr. Jharkhandi Upadhyay, A.P.P.

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 18-12-2018

Heard learned counsel for the petitioners and learned A.P.P. for the State. Despite notice having been served on opposite party no. 2, nobody appeared on his behalf when the matter was taken up and heard.

2. Learned counsel for the petitioners is permitted to make necessary correction in the name of the petitioner no. 1 and designation of the Judicial Officer who has passed the impugned order and the same be done during the course of the day.



3. The petitioner has moved the Court under Section 482 of the Code of Criminal Procedure, 1973 for the following relief:

“That this application is being filed for the quashing of the order dated 25.08.2010 passed in Jehanabad P.S. Case No. 373/2004 by the learned Chief Judicial Magistrate, Jehanabad whereby the learned court below has taken cognizance for offence under Section 406, 420, 307/34 of Indian Penal Code and Section 27 of Arms Act and rejected the final form bearing no.- 253/07 dated 07.10.04.”

4. Despite valid service of notice on the opposite party no. 2 (complainant), nobody was present when the case was taken up and heard.

5. The allegation against the petitioners is that they had taken money from the complainant and three others who are the witnesses for securing them job, the total being Rs. 1,45,000/- and further, that when he went to Jamshedpur for return of money, they were threatened and the accused no. 2 is also said to have opened fire from his pistol.

6. Learned counsel for the petitioners submitted that they are reputed persons based in Jamshedpur having no connection with Jehanabad and there being tenants in the house of



witness no. 10 at Jehanabad is a complete lie. It was further submitted that the present complaint is only with a view to harm and harass the petitioners which would be proved from the fact that the petitioner no. 1 had filed a complaint against one A.R.P. Verma, Junior Engineer, Electrical Section of the main Telephone Exchange of BSNL at Bistopur, Jamshedpur, who is the brother of the complainant. It was submitted that unfortunately, A.R.P. Verma is also co-brother (Sarhoo) of petitioner no. 1 and because of the complaint made by the petitioner no. 1 against A.R.P. Verma to the General Manager, Telecommunication, Jamshedpur dated 26.06.2001, the present complaint case has been filed on 11.10.2003 based on which Jehanabad P.S. Case No. 373 of 2004 dated 07.10.2004 has been instituted. Learned counsel submitted that the police after investigation has submitted final form but the Court below differed from the same and has taken cognizance without having any valid material. Learned counsel submitted that the police have also found that the petitioners have no connection whatsoever with Jehanabad and are residents of Jamshedpur and thus, the allegation of having taken money and residing at Jamshedpur is falsified.

7. Learned counsel submitted that the Court would also take note of the fact that when the petitioner no. 1 had made



complaint against the brother of the complainant in the year 2001, there was no occasion for the complainant to have given money to the petitioners, as per the complaint, when already the brother of the petitioner was aggrieved by the complaint made by the petitioner no. 1 against him to the superior authority.

8. Learned A.P.P. could not controvert the submissions made by the learned counsel for the petitioners that despite there being final form submitted by the police the Court had taken a view otherwise.

9. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out moreso when the complainant has received notice in the present case and chosen not to appear before the Court in the present application, which indicates that either he has lost interest in pursuing the matter or has no material to oppose. When, from the materials on record, it is apparent that the petitioner no. 1 had filed a complaint to the superior officer against the brother of the complainant and the said fact having been found true by the police during investigation and also that the petitioners never resided at Jehanabad, such facts having remained uncontroverted, there was no occasion for proceeding any further in the complaint case and



the same having been brought by way of final form in the police report before the Court, it was supposed to accept the final form and close the case as on facts there was no material before it to differ from the facts which had been established during investigation by the police.

10. For the reasons aforesaid, the application is allowed. The order dated 25.08.2010 passed in Jehanabad P.S. Case No. 373 of 2004 by the Chief Judicial Magistrate, Jehanabad by which cognizance has been taken against the petitioners under Sections 406, 420, 307/34 of the Indian Penal Code, stands quashed.

(Ahsanuddin Amanullah, J)

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