

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.14439 of 2014

Arising Out of PS.Case No. -1234 Year- 2013 Thana -COMPLAINT CASE District- JAMUI

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1. Shamim Akhtar Ansari Son Of Late Abdul Majid R/O Sira Nawada, P.S- Jamui,
District- Jamui.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Md. Bahauddin Son Of Late Abdul Ajeer R/O P.O- Arsar, P.S- Jamui, District-
Jamui.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjiv Sharan, Adv.

For the Opposite Party/s : Ms. Dr. Indivar Kumari, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date: 03-01-2018

Heard the learned counsels for the petitioner and the
opposite party no. 2.

The petitioner has challenged the order dated
27.11.2013 passed by the learned Judicial Magistrate 1st Class, Jamui
in connection with Complaint Case No. 1234/C/2013, whereby
cognizance has been taken against him for the offences under Sections
323, 406, 420, 379 and 504 of the Indian Penal Code.

The opposite party no. 2 retired as a clerk from Janta
Ucchh Vidyalaya, Arshar, Jamui in the year 2009. It has been alleged
by him in the complaint referred to above that because of the illegal
demand of 20% over the post retiral dues by the headmaster of the



school, viz. the petitioner, who had joined as headmaster on 01.08.2010, the opposite party no. 2 could not avail of his post retiral dues. It has also been alleged in the complaint that when the petitioner was confronted, he misbehaved with the opposite party no. 2 and that the petitioner has been deliberately and maliciously keeping back the service book of the opposite party no. 2.

Learned counsel for the petitioner has submitted that an absolutely false and concocted case has been lodged by the opposite party no. 2. In fact, the petitioner came to learn about the lodging of the complaint only on receipt of the two notices which were sent by the opposite party no. 2 to the petitioner on his school address. It has further been submitted that the opposite party no. 2 was suspended several times and a criminal case was also instituted against him. For the offence of the opposite party no. 2 committing forgery of the signature of D.E.O., Munger regarding sanctioning of a bill, he was suspended and the aforesaid fact of the suspension of opposite party no. 2 has been entered in his service book. It has also been submitted that precisely for this reason, the opposite party no. 2 has not been producing his service book and has in a malicious manner saddled the petitioner with the allegation of keeping back the aforesaid document.

Learned counsel for the petitioner has also drawn the attention of this Court to the fact that the retiral benefits of the



opposite party no. 2 has not been sanctioned by the office of the Accountant General because of the opposite party no. 2 not filing the requisite documents for the release of his post retiral dues. However, the amount of L.I.C. and GPF has been paid to the opposite party no. 2, the details bill of which payment has been annexed by the petitioner in the present petition. Learned counsel for the petitioner has further submitted that the staff of the school, of which the petitioner is the headmaster and where the opposite party no. 2 served as a clerk, have not supported the prosecution version. That apart, it has been submitted on behalf of the petitioner that assuming every allegation in the complaint petition to be true, no offence under anyone of the Sections under which cognizance has been taken against the petitioner can at all be said to have been made out.

The learned counsel for the opposite party no. 2 has however, submitted that the service book of the opposite party no. 2 was found in the almirah of the Principal In-charge of the school and now the Accountant General office cannot take the plea of the opposite party no. 2 not furnishing his service book for payment of the post retiral dues.

Regard being had to the fact that the payment of the post retiral dues of the opposite party no. 2 could not be made because of the absence of service book, the allegations against the petitioner



appears to be motivated and without any basis.

That apart, assuming the allegations in the complaint petition to be *ex facie* true, no offence under anyone of the Sections under which cognizance has been taken against the petitioner can at all be said to have been made out. The petitioner had joined as headmaster of the school only after the retirement of the opposite party no. 2 and the allegations levelled against him do not inspire confidence.

For the aforesaid facts, the order taking cognizance dated 27.11.2013 passed by the learned Judicial Magistrate 1st Class, Jamui in Complaint Case No. 1234C/2013 is set aside and the application is allowed accordingly.

(Ashutosh Kumar, J.)

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