

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.29223 of 2017

Arising Out of PS.Case No. -23 Year- 2009 Thana -GOVERNMENT OFFICIAL COMP. District -
GAYA

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Abdul Halim Khan @ Abdul Alim Khan S/o Late Suleman Khan resident of
Village - Agadhu, P.S. - Belaganj, District - Gaya at present in front of Lady Algin
Janana Hospital, Alamgirpur, Kalpana Compound, P.S. - Civil Lines, District -
Gaya.

.... Petitioner

Versus

The State of Bihar.

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Krishna Prasad Singh, Sr. Advocate
Mr. Bhashkar Shankar, Advocate
Mr. Meena Singh, Advocate
For State : Mr. Mrityunjaya Kr. Gautam, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 09-03-2018

Heard Mr. Krishna Prasad Singh, learned Senior
Advocate for the petitioner and Mr. Mrityunjaya Kumar Gautam,
learned Additional Public Prosecutor for the State.

2. This application under Section 482 of the Code of
Criminal Procedure (for short 'Cr.P.C.') has been filed by the
petitioner for quashing the order dated 17.04.2017 passed by the
learned Judicial Magistrate, 1st Class, Gaya in G.O. No. 23 of 2009/
T. R. No. 40 of 2016 whereby the petition filed on 30.01.2016 by
one Dr. Nasim Ahmad under Section 311 of the Cr.P.C. has been



allowed and the petitioner, who was examined as D.W. 5 in the case, has been recalled for further cross-examination.

3. It would appear from the record that the petitioner Abdul Halim Khan @ Abdul Alim Khan had filed a complaint case in the court of Chief Judicial Magistrate, Gaya on 31.03.2008 against Dr. Nasim Ahmad and two others . The said complaint petition was referred by the learned Chief Judicial Magistrate, Gaya to Civil Lines Police Station under Section 156(3) of the Cr.P.C. for investigation pursuant to which Civil Lines P. S. Case No. 309 of 2008 dated 13.01.2008 was registered under Sections 341, 323, 379 read with 34 of the Indian Penal Code (for short 'IPC') against the accused persons. On completion of investigation, the police submitted final form in the case showing the entire allegations levelled in the complaint petition as false and concocted one and recommended to initiate a proceeding against the informant of the case under Sections 182 and 211 of the IPC. Thereafter, G.O. Case No. 23 of 2009/TR No. 40 of 2016 was initiated against the petitioner. In the said case, the petitioner was examined on 29.09.2016 as a defence witness (D.W. 5) and after conclusion of the cross-examination, he was discharged on 27.10.2016. Ultimately, defence evidence was closed and the case was fixed for hearing on 30.11.2016. However, on 30.01.2016, a petition was



filed by Dr. Nasim Ahmad, who was one of the accused in the aforesaid Civil Lines P. S. Case No. 309 of 2008 stating therein that due to unavoidable circumstances, on 22.05.2016, nobody appeared on his behalf for cross-examination of D.W. 5. Hence, the said witness be recalled for cross-examination to meet the ends of justice, which was allowed by the learned Judicial Magistrate vide impugned order dated 17.04.2017.

4. Mr. Krishna Prasad Singh, learned Senior Advocate for the petitioner submitted that the impugned order is patently bad in view of the fact that Dr. Nasim Ahmad was neither complainant in the case nor on his complaint, the petitioner was being prosecuted in the G.O. Case. He had no *locus standi* to file any petition. The learned Magistrate failed to appreciate that such a petition could not have been entertained even for a moment. It committed gross illegality by allowing the petition and recalling the petitioner for cross-examination by Dr. Nasim Ahmad.

5. On the other hand, learned Additional Public Prosecutor for the State submitted that it was Dr. Nasim Ahmad against whom the petitioner had lodged a police case, which was found false during investigation and, thus, it cannot be said that he had no *locus standi* in the matter. He submitted that the court below committed no error while passing the impugned order.



6. I have heard learned counsel for the parties and perused the record.

7. From perusal of the impugned order dated 17.04.2017, it would be manifest that on 29.09.2016, the petitioner was cross-examined on behalf of the prosecution and he was further cross-examined on 27.10.2016 and, thereafter, he was discharged. The court has recorded its satisfaction in the impugned order that before discharge, he was fully cross-examined. However, without there being any cogent ground, the application filed on behalf of Dr. Nasim Ahmad was allowed vide impugned order dated 17.04.2017.

8. Moreover, in view of the provisions prescribed under Section 195(1)(a) and 195(1)(b)(i) of the Cr.P.C. for the offences under Sections 182 and 211 of the IPC make it mandatory that a private person cannot initiate a proceeding against any person. The complaint is to be made in writing either by the public servant or by the court concerned.

9. In G.O. Case No. 23 of 2009, Dr. Nasim Ahmad is not the complainant.

10. It is well settled that in a complaint case, necessary parties are the complainant and the accused. A person, who is neither the complainant nor an accused, would have no *locus standi* to file a petition for summoning any person in exercise of power



under Section 311 of the Cr.P.C. The proceedings in a criminal case are to be conducted only in accordance with law. Any one, who desires to prosecute an accuse cannot be permitted to participate in the proceedings and pray for summoning or recalling a witness.

11. In the opinion of this Court, the court below ought to have dismissed the said petition at the threshold. Apparently, the order impugned, if allowed to continue would amount to an abuse of the process of the court.

12. In that view of the matter, the impugned order dated 17.04.2017 passed by the learned Judicial Magistrate, 1st Class, Gaya in G.O. No. 23 of 2009/ T. R. No. 40 of 2016 cannot be sustained. It is set aside, accordingly. The application stands allowed.

(Ashwani Kumar Singh, J.)

Kanchan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.03.2018
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