

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.45283 of 2016

Arising Out of PS. Case No.-85 Year-2015 Thana- GANDHIMAIDAN District- Patna

Sitapati Chakhaiyar S/o Late Pashupati Nath Chakhaiyar r/o Road No. 6,
White House Compound, P.S. Rampur, District Gaya.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Harsh Singh, Advocate

For the Opposite Party/s : Mr. Sandeep Kumar, Advocate

For the State : Mr. Satyadeo Pd. Singh APP

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date : 13-09-2018

This petition under Section 482 Cr.P.C. has been filed for quashing the order dated 26.7.16 passed by J.M. 1st Class, Patna in G.R.No. 1559 of 2015 arising out of Gandhi Maidan P.S. case no. 85 of 2015 by which learned Magistrate has taken cognizance for the offence under Sections 419,420, 467,468,469, 471 and 120B of the IPC against the petitioner and other accused persons.

Heard learned counsel for the petitioner, State and informant.

Learned counsel for the petitioner submits that petitioner is a practicing advocate in the Gaya Civil Court. He has been maliciously involved in this case by the informant due to family dispute with his co- sharer. He has further submitted that there is



allegation that there is dispute between the family members of the informant and the petitioner. The petitioner being lawyer in the case on behalf of other side has been made accused by the informant only to demoralize him as a lawyer.

Learned counsel for the opposite party no.2 has submitted that there is specific allegation against the petitioner in the written report that he took signature of the informant on blank paper on the pretext that same will be used to file a representation on his behalf in the pending suit. The aforesaid paper was subsequently used as his resignation letter by writing the matters over the aforesaid blank paper.

Learned counsel for the State, on the other hand, after looking into the case diary has submitted that several witnesses have supported the case before the police during investigation that this petitioner got signature of the informant on plain paper on the pretext to be filed in the Gaya Civil Court in pending Title suit no. 895 of 2014 but the same was used as resignation letter. The CDR also demonstrate that there was telephonic conversation between the petitioner and the informant.

Learned counsel for the petitioner has relied on the decisions reported in **2008(1) PLJR (SC)51 (All Cargo**



Movers(I) Pvt. Ltd. and ors vs. Dhanesh Badarmal Jain), (2011) 3 SCC 351 (Harshendra Kumar D. vs. Rebatilata Koley & Or.),2010(4) PLJR 1096 (Arun Kumar Sharma @ Arun Sharma & Ors. vs. State of Bihar and Ors.) and 2011(1) PLJR 755 (Bharat Kishore Narayan Saraswati &Ors. Vs. The State of Bihar & Anr.) in support of his argument.

Learned counsel for the opposite party no.2 has relied on a decision report in **(2005)13 SCC 540 (State of Orissa and Anr. vs. Saroj Kumar Sahoo).**

This Court after hearing the submission of the parties and looking into the allegation in the written report as well as the impugned order finds that there is specific allegation made in the written report that this petitioner made call to the informant who was good friend of father of the informant and has been contesting the civil cases on behalf of the family members in Civil Court Gaya. The petitioner insisted the informant to travel to Gaya for finalization of the family partition and also other family cases which have been filed in Gaya Civil Court through his junior. The informant visited him on 16.2.2015 and met him at Gagan Apartment, Exhibition Road Patna where he insisted and obtained the signature of the informant on some



blank papers on the pretext to be used only for the purpose of representation in the Court cases. The informant did not doubt his intention because, in normal course, he was looking after the cases of the family and he became sure that this paper will be used for civil cases but the same has been used by the petitioner as his resignation letter. The signature was done by informant on blank paper on 16.2.2015 and the resignation letter was also dated 16.2.2015. The CDR and tower locations of the mobile phones of this petitioner and the informant on the relevant date i.e. on 16.2.2015 will also corroborate that petitioner has talked with the informant on that date. Police during investigation recorded statement of several witnesses and also verified the CDR of the calls between the informant and petitioner. The police has thereafter submitted charge sheet against the petitioner in the case along with other accused persons.

The learned trial court after looking into the material in the case diary and allegation in the written report has found *prima facie* case against the petitioner and accordingly, cognizance has been taken against this petitioner and other accused persons.

The learned Magistrate is only required to see *prima facie*



case on the basis of the material available in the case diary and the allegation made in the FIR at the time of taking cognizance.

Therefore, this Court does not find any illegality in the impugned order dated 26.7.2016, passed by JM Ist Class, Patna.

This Cr. Misc. petition is, accordingly dismissed. Petitioner is given liberty to raise all the points as raised in this petition at the time of framing of charge which will be considered by the learned Court below in accordance with law without being prejudiced by this order.

The Court below will proceed in the case in accordance with law.

The interim order passed by this court stands vacated.

(Sanjay Priya, J)

shyambihari/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	29.9.2018
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