

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.45265 of 2012**

Arising Out of PS.Case No. -635 Year- 2012 Thana -null District- SAMASTIPUR

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Kundan Kumar S/o Late Ram Chandrika Sharma, resident of Basant Vihar, P.S. Bettiah Muffasil, District-Bettiah.

.... .... Petitioner/s

Versus

1. State of Bihar
2. Anil Kumar Singh S/o Bir Bahadur Singh, resident of village-Bedit Badat, P.S. Patori, District-Samastipur.

.... .... Opposite Party/s

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**Appearance :**

|                              |   |                                                                              |
|------------------------------|---|------------------------------------------------------------------------------|
| For the Petitioner           | : | Mr. H. S. Himkar, Adv.<br>Mr. Ajit Kumar with<br>Mr. Kumar Kaushlendra, Adv. |
| For the Opposite Party No. 2 | : | Mr. Abhay Shankar Singh, Adv.                                                |
| For the State:               |   | Mr. Umashankar, APP                                                          |

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**CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA**

**ORAL JUDGMENT**

**Date: 25-01-2018**

Heard learned counsel for the petitioner, the State and opposite party No. 2 .

This petition has been filed for quashing the order dated 15-09-2012 passed in Complaint Case No. 635 of 2012 by learned Chief Judicial Magistrate, Samastipur by which, the learned Magistrate has after holding enquiry, found prima facie case against the petitioner for offence under Sections-504, 500/109 of the Indian Penal Code.

Counsel for the petitioner has submitted that this petitioner was never present at the place of occurrence which will be apparent from the complaint petition itself. He has further submitted



that the complainant in his SA has specifically stated that co-accused Deepak Anand told one Girendra Kumar Singh, Public Grievances Redressal Officer to arrest the complainant and send to police custody. The complainant has stated against this petitioner in his S.A. that Deepak Anand told that on the order of District Magistrate, the complainant was asked to be taken in custody. He has further stated in his SA that Deepak Anand told that the District Magistrate has ordered to arrest the complainant and teach lesson to the advocate who accumulate accused persons to go to Janta Darbar.

Learned counsel for opposite party No. 2 has submitted that it is fact that no any specific allegation has been made against this petitioner in the complaint petition or in the SA of the complainant. He has submitted that from complaint petition and SA of the complainant, it will be apparent that this petitioner was not present at the place of occurrence. The name of this petitioner has been disclosed by DDC Deepak Anand that the District Magistrate has ordered him to do such act on telephone.

Learned APP has submitted that there is no illegality in the impugned order.

The complaint was lodged by a practicing advocate of Civil Court, Samastipur, namely Anil Kumar Singh. It is alleged that on 19-04-2012 at 9.00 a.m., one poor lady Jareena Khatoon came and



requested to draft an application for filing in Janta Darbar, held by District Magistrate, Samastipur with respect to old age pension as well as ration and K. oil. The complainant was provided Rs. 30/- as fee and the lady went to Janta Darbar. The said lady returned after two hours and made request with him to accompany her in Janta Darbar. The complainant along with other lawyers went to Janta Darbar. The Deputy Development Commissioner did not even ask the complainant to sit on the chair. The DDC enquired from the complainant whether he had drafted the petition filed by the old lady in Janta Darbar. The complainant replied in affirmative. Thereafter, the DDC contacted the petitioner on mobile and informed that he has called the advocate who uses to make gathering in Janta Darbar and asked what to do with him. The complainant did not hear any conversation between this petitioner and DDC. The DDC later on directed the Public Grievance Redressal Officer to get the complainant arrested by the police and sent him to police custody. The police on such order, arrested the complainant and kept him in custody for about 25 hours without any food and water. There was agitation by the advocates. The Superintendent of Police, Samastipur had talked with the Secretary of the Union and Senior advocates and thereafter, directed the officer-in-charge to release the complainant.

The learned Magistrate has in the impugned order after



discussing the statement of witnesses recorded during enquiry has concluded that in absence of the most important witness Jarina Khatoon, (the old lady) he did not find any case under Sections- 466/109, 469/109 and 342 of the Indian Penal Code but there is sufficient and direct material u/S 504 and 500 of the Indian Penal Code against accused No. 2 Mr. Deepak Anand and for their abatement u/S 504 and 500/109 against accused No. 1 (petitioner) Mr. Kundan Kumar and accused No. 3 Girendra Kumar Singh.

Counsel for the petitioner has during course of argument has pointed out Annexure-6 to the supplementary affidavit i.e. the order dated 07-10-2013 of this Hon'ble Court passed in CWJC No. 9484 of 2012 by which the matter was disposed off as the court was informed that parties have agreed that none of the parties want to pursue the present matter either before the court of law or in any other forum.

In this manner, from the complaint petition and the SA of the complainant, this court finds that this petitioner was not present at the time of occurrence.

The complainant has admitted in the complaint that he did not hear the conversation between the DDC and this petitioner.

It is alleged in the complaint that DDC told that he has received an order from the District Magistrate, Samastipur to teach a



lesson to the advocate who causes accumulation of persons in Janta Darbar. In the complaint petition, there is specific allegation against DDC, Deepak Anand of misbehaving with the complainant and ordering to arrest the complainant. He ordered accused No. 3 to lodge FIR against the complainant.

Accordingly, the impugned order of the learned Magistrate by which he has found prima facie case against this petitioner for the offence under Sections-504/109 & 500/109 for abatement is not in accordance with law and the same is, accordingly, set aside.

Therefore, the impugned order dated 15-09-2012 passed in Complaint Case No. 635 of 2012 by learned Chief Judicial Magistrate, Samastipur along with entire criminal proceeding against the petitioner is hereby quashed.

This Cr. Misc. Application is allowed.

The court below will, however proceed in trial with regard to other accused persons in accordance with law.

**(Sanjay Priya, J)**

A.K.V./-

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| AFR/NAFR          | AFR        |
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