

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.13608 of 2015

Arising Out of PS. Case No.-3649 Year-2013 Thana- SARAN COMPLAINT CASE District-
Saran

-
1. Om Prakash Son of Late Ganesh Prasad resident of Mohalla - Shiv Nagar, P.S. Beur, Distt. - Patna, at Present officer - in - Charge of Sonepur, P.S. Saran
 2. Sri Charan Ram S/o Chethari Ram R/o village - Tiyya, P.S. Ander, Distt. - Siwan, Now Posted at Ekura Police Station, Distt. - Saran
 3. Neeraj Kumar Paswan S/o Sri Hari Nath Paswan R/o Dumaria, P.S. Town, District - Gopalganj, At Present Posted at Chapra Police Office

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Dhananjaya Singh S/o Late Prithaviraj Singh R/o Sonepur Ahirapatti , P.O. P.S. Sonepur, District - Saran

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. N. K. Agrawal, Sr.Adv.
	:	Mr. D.N.Tiwari, Adv.
	:	Mr. P.C. Agrawal, Adv
For the Opposite Party No.2:	:	Mr.Nagendra Prasad, Adv
	:	Mr. Radha Mohan Pandey, Adv
For the State	:	Mr.Shyam Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 16-07-2019

Heard learned counsel for the parties.

2. The petitioners have challenged in this application under Section 482 Cr.P.C., the order of cognizance dated 05.08.2014 passed in Complaint Case No.3649 of 2013 whereby the learned Judicial Magistrate-1st Class, Saran at Chapra has taken cognizance against the petitioners for offences under Sections 323, 504/34 I.P.C.



3. The background of the complaint case aforesaid is that petitioner No.1- Om Prakash, the officer-in-Charge of Sonepur Police Station, lodged the report with the learned Chief Judicial Magistrate, Chapra on 19.11.2013, stating therein that alongwith the police party including petitioner No.3-Neeraj Kumar Paswan and others, the informant was on patrolling duty. He found that one Sheo Shankar Sharma and Pankaj Kumar, after consuming liquor, were indulged in abuse to the people generally at the hotel of this complainant named as “Sankat Mochan Bhojnalay”. The customers taking food thereat were panic. Hence, the police took both Sheo Shankar Sharma and Pankaj Kumar into custody and also took the complainant of this case to the police station for enquiry. At the police station, the complainant was allowed to go after execution of P.R. Bond after certain queries made by the police, whereas two others were granted bail by the police after their medical examination. P.R. Bond executed by the complainant is at page-22 and P.R. Bond of others is at Page-23 and 24. The medical report of all the three person including the complainant is also attached at Annexure-3. The Doctor had not found any external injury on the person of the complainant of this case nor there is any mention of any internal injury in the injury report.



4. In the aforesaid background, the present complaint petition was filed on 27.11.2013 stating therein that on 19.11.2013, the petitioners came to the “Bhojnalay” of the complainant and took food thereat. Thereafter, they started taking drinks which was opposed by the complainant. Being infuriated, the petitioners along with other police associates allegedly abused and assaulted to the complainant which resulted in extraction of frontal teeth. The accused person further committed theft of cash from the cash box.

5. Learned counsel for the petitioners submits that this is a case of out and out malicious prosecution. The complainant is not only a businessman rather claims to have direct connection with a political party. The complainant has not produced any injury report contrary to what the police has got after their examination by the Doctor. The delayed complaint petition has got no explanation. The complaint petition is not on oath which is a requirement of law in view of the judgment of the Hon’ble Supreme Court in **Priyanka Srivastava & Anr Vs. State of Uttar Pradesh & Ors**, reported in (2015)6 SCC 287.

6. On the other hand, learned counsel for the informant submits that the perusal of the complaint petition would make it clear that cognizable offence is disclosed therein and at this stage



meticulous appreciation of evidence is not permissible. The learned Magistrate has applied its judicial mind based on the material on the record. Hence, defence of the accused can be looked into at the appropriate stage of the trial only. He further submits that the complainant is specific that his signature was taken by the accused person on some blank papers. In the circumstance, the blank paper might have been used as a P.R. Bond. His further contention is that it is not the official duty of the Officer-in-charge of a police station or other public servants to commit abuse and assault as well as theft as alleged in the complaint petition. Hence, it cannot be argued that in absence of sanction prosecution of the petitioners is not permissible.

7. Now the issue before this Court is whether the prosecution of the petitioners is result of malice and with intent to wreak vengeance for the personal and private grudge. The complaint petition itself reveals that the local people wanted to put a theater at the land of one Rama Shankar Singh during Sonepur fair. The said act of the local people was not liked by the accused No.1, however, the complainant being a political figure approached to the Sub Divisional Magistrate, Sonepur and got approval of the aforesaid theater at the mentioned place. Hence, the accused person were carrying grudge for that. Second reason



is that on the occasion of opening ceremony of the Sonapur fair, a Minister of Bihar Govt. had gone and the people of a political party made slogan against him which was also a reason for grudge of the petitioners.

8. It is evident that one of the petitioners had reported to the learned Chief Judicial Magistrate on 19.11.2013 itself regarding the referred occurrence of commission of abuse and rioting by two persons after taking liquor on 19.11.2013 itself in the “Bhojnalay” of the complainant. The complainant was also taken by the police at the police station for enquiry and that might have touched ego of the complainant which laid to the filing of present complaint case after delay of seven days without any explanation for the same.

9. The complaint petition apparently reveals a case of non-compliance of the provisions of Section 154 Cr.P.C. The complainant never approached to the police for institution of a police case even if the matter was against the police officials. The law requires vide 154(3) Cr.P.C. that the aggrieved person would approach to the higher police officer for institution of the police case. The complainant did not take any step to follow the aforesaid procedure rather filed unaffidavited complaint. Thus the case is squarely covered by the judgment of the Hon’ble Supreme Court



in **Priyanka Srivastava** case (Supra) and the Hon'ble Supreme Court in para-31 of the judgment has observed as follows:

“We have already indicated that there has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3)... ”.

10. Thus on closure analysis of the material on the record, it is evident that one of the petitioners has lodged the report with the learned Chief Judicial Magistrate, Chapra on 19.11.2013 about the occurrence of 19.11.2013 itself vide Annexure-2.



Thereafter, the present complaint case was filed on 27.11.2013 alleging the occurrence of 19.11.2013. Thus the petitioners were found acting in good faith in discharge of their official duty and the act of the petitioners disclosed in Annexure-2 resulted in persuading the complainant to wreak vengeance and the complaint case was filed after one week of the occurrence under a pre-planned manner.

11. Therefore, in my view, the criminal prosecution of the petitioners is abuse of the process of the court. Hence, the impugned order and entire criminal proceeding stands quashed and this application stands allowed.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.07.2019
Transmission Date	20.07.2019

