

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.6570 of 2015**

Arising Out of PS. Case No.-17 Year-2013 Thana- KUNDWA CHAINPUR District- East
Champaran

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Md. Manjarul Haque Son of Sk. Jamil Akhtar Resident of Village - Banjarha,
P.s.-Kundwa Chainpur, Dist.-East Champaran

... .. Petitioner/s

Versus

1. The State of Bihar
2. Abdul Salam Son of Gani Mohammad Resident of Village - Banjarha, P.S. -
Kundwa Chainpur, Dist.-East Champaran

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Madhurendra Kumar, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
For the O.P No. 2	:	Mr. Md. Anisur Rahman, Advocate

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT**

Date : 19-06-2019

Heard learned counsel for the petitioner; learned APP for
the State and learned counsel for the opposite party no. 2.

2. The petitioner has moved the Court under Section 482
of the Code of Criminal Procedure, 1973 (hereinafter referred to as
the ‘Code’) for the following relief:

*“ That this is an application invoking your
lordship inherent jurisdiction for quashing the
order dated 2.12.2014 passed in Trial no.
3019/14 arising out of Kundwa Chainpur, P.S.
Case No. 17/13 by the learned Judicial
Magistrate Ist Class Sikrahana Motihari
whereby and where under the learned
Magistrate dismissed the petition dated
24.3.2014 filed u/s 239 Cr.P.C. for discharge
the petitioner.”*



3. The opposite party no. 2 had filed a complaint before the District Magistrate, East Champaran which was sent to the police resulting in institution of Kundwa Chainpur P.S. Case No. 17 of 2013 (Trial No. 3019 of 2014). The same was lodged under Sections 419/420 of the Indian penal Code. Upon investigation, charge sheet was submitted under Section 384 of the Indian Penal Code and subsequently by the impugned order dated 23.09.2013, the Court has also taken cognizance under Section 384 of the Indian Penal Code. The petitioner thereafter filed a petition under Section 239 of the Code for discharge which has been rejected by order dated 02.12.2014.

4. Learned counsel for the petitioner submitted that from the entire allegation made in the FIR, no ingredient of Section 383 of the Indian Penal Code which defines extortion is made out. It was submitted that based on the same, even the charge sheet was completely erroneous and the Court below has also not applied its judicial mind before taking cognizance under Section 384 of the Indian Penal Code, which has been done in a routine manner.

5. Learned APP fairly, submitted that no ingredient of Section 383 of the Indian Penal Code is made out even if the entire allegations are accepted to be true at their face value.



6. Learned counsel for the opposite party no. 2 submitted that it is a case of extortion as the petitioner had issued threat to the people who had come to complain against the CDPO. It was submitted that by implication, the amount was taken from various persons by the petitioner and his wife also under threat. However, on a query of the Court as to how even one ingredient of Section 483 of the Indian Penal Code is made out, learned counsel fairly submitted that extortion is not made out but submitted that money was taken by the petitioner and his wife which was defalcated.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the order impugned cannot be sustained.

8. Section 383 of the Indian Penal Code defines extortion. The same reads as under:

“ **383. Extortion**-Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the security, or anything signed or sealed which may be converted into a valuable security, commits “extortion”.”

9. Similarly, Section 384 is the charging section which reads thus:

“**384 Punishment for extortion**-Whoever commits extortion shall be punished with imprisonment



of either description for a term which may extend to three years, or with fine, or with both.”

10. From the above, it is clear that the extortion can be said to have been committed only where the intention of any person is to put in fear any person and dishonestly induce him to deliver any property or valuable security or anything signed or sealed which may be converted into a valuable security. In the present case, on the basis of admitted facts, the allegation is that the petitioner and his wife had taken money under the garb of some insurance with regard to the children. Thus, there was no fear or any threat meted out while taking money. The threat which is said to have been given by the petitioner is only later in the meeting before the CDPO that the complainant would not be able to harm the petitioner in any way and also with regard to dire consequences. This cannot, by any stretch, be equated with extortion, as taking of money, even as per the opposite party no. 2, by the petitioner and his wife was on the pretext of insurance of the children.

11. For reasons aforesaid, the application is allowed. The order impugned dated 23.09.2013 by which cognizance has been taken by the Court below in proceeding arising out of Kundwa Chainpur P.S. Case No. 17 of 2013 (Trial No. 3019 of 2014) as well as the order dated 02.12.2014 by which petition under Section



239 of the Code for discharge has been rejected, as far as it relates
to the petitioner, stands quashed.

(Ahsanuddin Amanullah, J)

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