

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20706 of 2015

Arising Out of PS. Case No.-2093 Year-2013 Thana- GAYA COMPLAINT CASE District-
Gaya

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Phra Bodhinandhamunee @ P. Bhakdee, S/o Late Mr. Lee, resident of Watpa, Thamachat, Chonburi, Thailand presently resident of Buddhist Thai Bharat Society, Village – Mastipur, South of Main Temple, at & P.O. & P.S. Bodhgaya, District Gaya

... .. Petitioner/s

Versus

1. The State of Bihar
2. Mr. Kitti Nawani, Son of Late Mohan Lal Nawani permanent address 555 SSP Tower 21st floor soi 63 (Ekamal) Sukhumvit Road, Bangkok – 10100 Thailand at present Buddhist Thai Bharat Society at & P.O. Bodhgaya, P.S. Bodhgaya, District Gaya

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Nishant Kumar Jha, Advocate Mr. Rahul Bhandari, Advocate Mr. Shyam Kumar Singh, A.P.P.
For the O.P. No. 2	:	None
For the State	:	Mr. Shyam Kumar Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 19-07-2019

Heard learned counsel for the petitioner. No one appears on behalf of the opposite party no. 2, though notices have already been served.

2. The petitioner has challenged the order of cognizance dated 11.07.2014 passed by the learned Judicial Magistrate, 1st Class, Gaya in Complaint Case No. 2093 of 2013 brought by opposite party no. 2, against the petitioner whereby and whereunder cognizance has been taken for offence under Section 500 of the Indian Penal Code, against the petitioner.



3. The challenge is on the ground that no case of defamation is made out on bare perusal of the complaint petition and the Magistrate has acted in a mechanical manner while summoning the petitioner to face trial by the impugned order.

4. According to complaint petition, the complainant Mr. Kitti Nawani claims to be a person of Indian origin and follower of Buddhism. There is a religious, cultural and charitable society at Bodhgaya in the district of Gaya named as “BUDDHIST THAI BHARAT SOCIETY”. The society has constructed a Monastery and a temple at Bodhgaya known as “WATPA”. The complainant was General Secretary of the Society and Chief Functionary whereas the petitioner was former President of that Society. On 06.10.2013, when a meeting of the society was going on and the complainant was not present there, the petitioner allegedly made remark in presence of witness Shabbi Shamsi that the complainant (Kitti Nawani) had cheated to the petitioner by counterfeiting signature of the petitioner in the meeting book of the society and other places also. The complainant allegedly removed the petitioner from the post of the President of the Society. Again in the meeting dated 14.10.2013, the petitioner made remark in presence of the complainant that the complainant has cheated to the petitioner by fabricating his signature and dethroned him from the post of the President of the Society. Petitioner stated as follows



“You Indian are cheaters and thieves, we Thai don’t want any Indian in the committee of the society. You (Kitti Nawani) are cheater. We will manage it with our will and own law”.

5. Learned counsel for the petitioner submits that opposite party no. 2 is not appearing probably for the reason that he is absconding in two criminal cases lodged against him.

6. Submission of learned counsel for the petitioner is that the complainant as well as the petitioner are Thai citizens. They are not citizen of India. The meeting of the society dated 14.10.2013 took place at Bangkok and this fact has deliberately been suppressed in the complaint petition, just to create jurisdiction of the Court in India. He further submits that even if it is assumed that such statement was made by the petitioner, the same was made in good faith and for the benefit of the society as the petitioner was office-bearer of the society in the past and had interest in the upkeep of the society. Petitioner has stated on oath in the petition that the petitioner was President of the Society and opposite party no. 2 was the General Secretary of the Society. Opposite party no. 2 used to manage the affair of the society in unreasonable and despotic manner. Petitioner being President was cornered down in order to avoid any interference in the actualities of opposite part no. 2, who committed several irregularities in the society, like divergence of funds of the society in violation of the



law imposed. For the aforesaid illegal act of the opposite party no. 2 Bodhgaya P.S. Case No. 334 of 2014 was registered. Hence, the remark of the petitioner was in good faith and is covered by Exception 8 and 9 of Section 499 of the Indian Penal Code which defines the word “defamation”. Exception 8 says that it is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

7. Contention is that in this case, the petitioner was President of the Society, hence, had lawful authority to criticize the act of the Secretary in his official capacity in the official meeting and whatever is alleged to be defamatory was in respect of the official act of the complainant.

8. Exception 9 says that it is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

9. In this case, imputation was made on the character of the complainant to protect the interest of the said society. The imputation was not a balled one, rather supported by the FIR lodged against the complainant not by the petitioner, rather by the Revenue Officer.



10. I find substance in the submission of learned counsel for the petitioner that the allegation disclosed is covered by the Exception 8 and 9 of Section 499 of the Indian Penal Code which defines defamation except the cases mentioned in Exceptions attached to the Section including Exception 8 and 9. Besides the aforesaid one part of the alleged defamatory statement allegedly took place at Bangkok i.e. not within the territorial jurisdiction of the court taking cognizance. So far another part of the occurrence dated 06.10.2013 is concerned, the same was not made in presence of the complainant and was found to be made in good faith in the meeting of the committee of which property was allegedly misused by the office-bearer (complainant).

11. In the case of **PEPSI FOODS LTD. AND ANOTHER** Versus **SPECIAL JUDICIAL MAGISTRATE AND OTHERS** reported in **1998(5) SCC 749**, the Hon'ble Supreme Court held as follows:-

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of



allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused”.

12. Apparently, the Magistrate has not applied its mind as to whether the offence alleged is disclosed against the petitioner or not.

13. Hence, criminal prosecution of the petitioner amounts to an abuse of the process of the Court. Accordingly, the same stands quashed and this application stands allowed.

(Birendra Kumar, J)

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