

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 43548 of 2013**

Arising Out of Complaint Case No.-1994 C Year-2009 Thana- SITAMARHI COMPLAINT
CASE District- Sitamarhi

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Manish Sharma Son of Mr. Kameshwar Nath Sharma Resident of 194 A,
People's Co-operative Colony, Kankarbagh, Police Station - Kankarbagh,
District – Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Shri Shailendra Kumar Advocate, Son of Late Rup Narain Kumar Resident
of Ward No. 4, P.S.- Dumra, District – Sitamarhi.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Navendu Kumar, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP

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

ORAL JUDGMENT

Date : 09-05-2019

Heard learned counsel for the petitioner and learned
APP for the State.

2. Despite service of notice on opposite party no. 2,
nobody appeared when the case was taken up and heard.

3. The petitioner has moved the Court under Section
482 of the Code of Criminal Procedure, 1973 for the following
relief:

*“That the present petition for quashing
of the entire proceeding of criminal complaint
case bearing number 1994-C/2009 (Trial No.
2550/2012) titled Shailendra Kumar Versus
Anjani Kumar Verma and others, pending before
the Learned Court of Shri R. K. Sinha, J.M. 1st*



Class, Sitamarhi, Bihar including the order of cognizance dated 30.11.2011 summoning the petitioner and two others for commission of offences under sections 352/504 Indian Penal Code on the ground that from the allegations made in the complaint and statements of witnesses made in the complaint, even if at its face value and accepted in its entirety it do not prima facie constitute any offence and make out a case against the petitioner.”

4. The opposite party no. 2-complainant has filed the case against the petitioner and four other persons.

5. As per the complaint, the opposite party no. 2 was initially occupying Government land and was asked to remove the same and seek settlement and accordingly, he removed the encroachment and two decimals of lands was also proposed to be settled in his favour on lease for an amount of Rs. 30,600/- in the year 1997 but he had filed an application before the Collector, Sitamarhi to reduce the amount and in the year 2005, on which, the Collector had increased the same to 1,04,600/- on the ground that the market rate after seven years had increased. It has further been stated that the opposite party no. 2 moved this Court in a writ petition as the Collector had sanctioned a project for construction of Children's Park on the land which included the portion which was offered to be settled with the opposite party no. 2. It is alleged that when the petitioner went to the residence of the Collector, Sitamarhi to request him to stop the tender with regard



to two decimals of land, the accused, including the petitioner, who at the relevant time was posted as Block Development Officer and Incharge Circle Officer, Dumra insulted him and kicked him out of the office.

6. Learned counsel for the petitioner submitted that the allegation is absolutely false and frivolous as the land being Khas Mahal land was being used for building of Children's Park, i.e., public purpose, the same could not be settled with the opposite party no. 2 and only to exert undue influence and to pressurize the officials, the false complaint case has been filed. Learned counsel submitted that in the deposition of the opposite party no. 2, before the Court on Solemn Affirmation, he has stated that the incident took place on 24.12.2009 at 6.00 P.M. at the residence of the Collector, Sitamarhi and surprisingly, the complaint has been filed on 24.12.2009 itself. Thus, it was submitted that the allegations are patently false as no complaint can be filed after the working hours of the Court, moreso in view of the fact that the complaint is neatly typed which obviously would take time and also the stamps being affixed and the petition filed could not have been possible on 24.12.2009 itself, if at all, any such incident had happened at 6.00 P.M. at the residence of the Collector on the same day. Learned counsel submitted that two accused in the present case



namely, Ramji Sah and Anjani Kumar Verma had moved the Court for quashing of the common cognizance order, which is also impugned in the present application, in Cr. Misc. No. 6759 of 2012 and Cr. Misc. No. 13140 of 2013, which, by a common judgment dated 12.07.2017 have been allowed and the entire criminal proceeding, including the order taking cognizance dated 30.11.2012 has been set aside. Copy of the same has been produced by learned counsel for the petitioner before the Court. The same is taken on record.

7. Learned APP submitted that though on the basis of the materials before the Court and the deposition of the witnesses, cognizance has been taken but in view of what has been stated in the complaint along with the interference made by the Court in such order of cognizance and setting aside of the complaint case itself, the present case also deserves to be allowed.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out.

9. As has rightly been submitted by learned counsel for the petitioner, the allegation that the incident occurred at the residence of the Collector at 6.00 P.M. on 24.12.2009 and the complaint case also been filed on the same day, clearly cannot be



reconciled. This is a clear indication of no such incident having taken place and only a cooked up allegation has been made against the petitioner and other accused. Moreover, there was no occasion for the opposite party no. 2 to visit the residence of the Collector at 6.00 P.M. in connection with any official work which had to be done, if at all, during the working hours and that too in the office of the Collector. Moreover, a co-ordinate Bench earlier in the aforesaid two cases filed by similarly situated co-accused having inferred in the matter, coupled with the fact that nobody has appeared to oppose the application, the present application also stands allowed.

10. Accordingly, the entire criminal proceeding arising out of Complaint Case No. 1994-C of 2009 (Trial No. 2550 of 2012), pending before the Court below at Sitamarhi, including the order taking cognizance dated 30.11.2011, as far as it relates to the petitioner, stands quashed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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