

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.77820 of 2019**

Arising Out of PS. Case No.-449 Year-2015 Thana- KOTWALI District- Patna

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SUNIL KUMAR SINHA, Son of Shri Nageshwar Prasad Sinha, Practising as an Advocate in Honble Patna High Court, Patna and Civil Court, Patna, Resident of Village-Kharuara, P.O-Chero, P.S-Harnaut, District-Nalanda, State-Bihar.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Shyam Kishore Sinha, Adv.

For the Opposite Party/s : Mr.Ramchandra Sahni (APP)

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**CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT**

Date : 03-02-2020

Heard both the parties.

2. This application has been filed for setting aside the order dated 30.04.2010 passed in Kotwali P.S. Case No. 449 of 2015 by which the court below has taken cognizance of the offence under Sections 147, 341, 323, 353, 504, 506 of the Indian Penal Code and issued summons to petitioner for his appearance.

3. Petitioner filed an application under Section 239 of Cr.P.C. for discharge as no criminal offence is made out



against him and necessary ingredients in order to constitute offences under said sections are completely lacking however same was rejected by impugned order.

4. Informant is A.S.I. of police of Kotwali P.S., Patna who in his written complaint addressed to officer-in-charge Kotwali police station, Patna has alleged that he was performing his duty as per order of Sr. officials on 07.08.2015 in the newly constructed Bihar Museum and was posted at the main gate, during its inaugural function and was permitting the invitees to enter the museum after checking their identity card and pass meanwhile at about 8:30 P.M. one person in white kurta and pajama came and tried to enter the museum without invitation card or pass as such he was denied entry thereafter he disclosed himself to be an Advocate and threatened them if he does not permit him to enter he would pelt stones and began to shout and also abused the police and the matter was mediated.

5. On the basis of said FIR Kotwali P.S. Case No. 449 of 2015 dated 07.08.2015 was instituted under sections 147, 341, 323, 504, 506, 353 of Indian Penal Code and after completion of investigation police found the allegations to be true and identified unknown person as petitioner and submitted chargesheet against him.



6. Petitioner thereafter filed a discharge petition under section 239 and 240 of Cr.P.C. to discharge him as during investigation there is no evidence or material found against him to constitute any criminal offence, however, the trial court after considering the materials available in case diary found charges not to be groundless and rejected the discharge petition against which present quashing application has been filed.

7. From the records it appears that petitioner has also filed a complaint case giving rise to Complaint Case No. 2843(C) of 2015 in the court of Chief Judicial Magistrate, Patna in which he has made Mamta Kalyani, Deputy Superintendent of Police, Law and Order, Kotwali, Patna, as sole accused and in his complaint petition he has alleged that on 07.08.2015 at about 7:30 P.M. he was going to his residence from Patna High Court and as he reached the newly constructed museum he was stopped by the police and when he inquired as to why he has been stopped accused Mamta Kalyani assaulted him by stick on his back thereafter he went to new Gardiner hospital and got himself treated and as he was humiliated and insulted in a public glaze he went to police station to lodge FIR but same was declined and as such on 10.08.2015 he filed complaint case in which petitioner/complainant was examined on S.A. and



inquiry witnesses were also examined and on the basis of complaint case, examination of complainant on S.A. and statement of inquiry witnesses, the court found *prima facie* to be made out against sole accused Mamta Kalyani and took cognizance against her for offences under Section 323, 324, 325 and 500 of IPC by order dated 16.01.2018 passed by A.C.J.M.-12th Patna and issued summons for her appearance to face the trial.

8. After hearing the counsel for the petitioner and perusing the materials available on record it appears that case and counter case arises out of trivial issue and necessary ingredients in order to constitute criminal offence and criminal intent is lacking in both cases. Section 80, 81 and 95 of Indian Penal Code reads as follows:

80. Accident in doing a lawful act.—

Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

81. Act likely to cause harm, but done without criminal intent, and to prevent other harm.—

Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to



cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

95. Act causing slight harm. -Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

9. For the reasons as stated above and as necessary ingredients are lacking in both cases in order to constitute any criminal offence, the order taking cognizance dated 30.04.2019 passed by Sub-Judge-III-cum-A.C.J.M., Patna as well as whole criminal proceeding arising out of Kotwali P.S. Case No. 449 of 2015 dated 07.08.2015 is quashed. This court also finds that continuation of criminal proceeding in Complaint Case No. 2843 (C) of 2015 against the sole accused Mamta Kalyani also cannot be permitted to continue as allegations are of trivial nature and committed during discharge of official duty as such order taking cognizance dated 14.08.2015 passed by in-charge C.J.M., Patna in Complaint Case No. 2843 (C) of 2015 as well as the whole criminal proceeding arising out of said complaint case is quashed in order to meet the ends of justice.

10. The criminal miscellaneous petition is



allowed.

11. Let the order be communicated to both of the courts.

(S. Kumar, J)

Rajiv/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

