

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.50185 of 2015

Arising Out of PS. Case No.-713 Year-2015 Thana- PATNA COMPLAINT CASE District-
Patna

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Amitabh Kumar Son of Shiv Kumar Singh resident of Anandpuri House
'Indrashan' Boring Canal Road, P.S. S.K. Puri, District - Patna

... .. Petitioner

Versus

1. State of Bihar
2. Bimal Bihari Sharan Son of Sri Madan Bihari Sharan resident of Mohalla -
Bir Basawan Nagar, Shivpuram, Bailey Road, Patna, Proprietor of Sharan
Automoblies, Saguna More, Danapur, Patna

... .. Opposite Parties

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Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Advocate Mr. Ashish Giri, Advocate
For the Opposite Party/s	:	Mr. Akhileshwar Dayal, APP
For O.P. No.2	:	Mr. Sanjay Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date : 20-09-2023

Heard Mr. Y.V. Giri, learned Senior Counsel assisted by
Mr. Ashish Giri, learned Advocate for the petitioner, Mr. Sanjay
Kumar, learned counsel for the complainant – O.P. No.2 and Mr.
Akhileshwar Dayal, learned APP for the State.

2. Petitioner in the present case is seeking setting aside
of the order dated 06.07.2015 passed by learned Additional Chief
Judicial Magistrate, Danapur (hereinafter referred to as the
'learned Magistrate') in Complaint Case No.713(C) of 2015
whereby and whereunder the learned Magistrate has taken
cognizance of the offences under Sections 384 and 420 of the



Indian Penal Code (in short 'IPC') and decided to issue summons to the petitioner.

3. As per the allegations made in the complaint petition, the complainant who is running a Pollution Checking Center in the name of Sharan Automobiles at Saguna More, Danapur, Patna, received a telephonic call from an unknown person on his mobile. The said unknown person handed over the phone to the petitioner who is a Motor Vehicle Inspector. The complainant alleges that the petitioner threatened him to kill by cutting six inches. Allegedly, the petitioner demanded a sum of Rs.2 lakhs per month as ransom for running the Pollution Checking Center. The complainant claimed that he tried to lodge the information with the higher police officials, but no action was taken, hence, the complaint petition was filed.

4. It appears that on the basis of the statement on oath of the complainant and one witness, namely, Upendra Kumar Sharma, the learned Magistrate took cognizance of the offences and issued summons.

5. Learned Senior Counsel for the petitioner submits that on a bare reading of the complaint petition, it would appear that the said petition was filed not for taking cognizance and issuance of summons. The petition was filed with a prayer to send a copy of



the complaint petition to the concerned Police Station, Danapur for lodging a First Information Report and as per provision contained under Section 156(3) of the Code of Criminal Procedure (in short 'Cr.P.C.'). The grievance of the petitioner was that the complaint lodged before the police was not taken care of. However, in his complaint petition, the complainant did not disclose the name of the police station and the higher officials with whom he lodged the complaint.

6. Learned Senior Counsel submits that before filing an application / complaint under section 156(3) Cr.P.C., the complainant was obliged to follow the procedures which have been discussed by the Hon'ble Supreme Court in the case of **Priyanka Srivastava and Another vs. State of U.P and others** reported in **(2015) 6 SCC 287**.

7. It is submitted that the complainant proceeded to file a complaint under Section 156(3) Cr.P.C., without filing an application under Section 154(3) Cr.P.C. In this connection, he relied upon paragraphs '30' and '31' of the judgment in the case of **Priyanka Srivastava** (supra).

8. Learned Senior Counsel further submits that the prosecution of the petitioner is out and out a case of malafide prosecution which would be evident from the official records



which are in the nature of admitted documents. Learned Senior Counsel has referred the official letter No.472 dated 07.05.2015, written by the Joint Commissioner-cum-Secretary, Regional Transport Authority, Patna Division, Patna to the Motor Vehicle Inspectors of Patna/ Nalanda/ Rohtas/ Bhojpur, wherein they have been directed to inspect the pollution checking centers. As regards the center of the complainant, this petitioner has been authorized.

9. Learned Senior Counsel submits that the complainant was duly informed of the letter of the Joint Commissioner and he was called upon to show compliances on the eight points in public interest. It is stated in the said letter that if the complainant would fail to comply with those requirements and submit the papers showing such compliances, action would be taken in accordance with law against the center. Learned Senior Counsel submits that thereafter reminder letter No.70 dated 22.05.2015 and letter No.74 dated 08.06.2015 which are Annexure '7' series were sent to the complainant. It is submitted that after service of the reminder letter No.70 dated 22.05.2015, the complainant seems to have decided to implicate the petitioner in a false case. He has brought on record the first version of the complainant in form of a written application addressed to the Officer-in-Charge, Danapur Police Station, wherein he has not at all alleged about any demand of money by



this petitioner. The only allegation made was that this petitioner threatened him to kill him on phone but the reason for that was not disclosed.

10. Learned Senior Counsel submits that in fact there is no allegation that this petitioner has received any money from the complainant while putting him under threat. Relying upon a judgment of Hon'ble Supreme Court in the case of **Salib alias Shalu alias Salim Versus State of U.P. and Others** reported in **2023 SCC OnLine SC 947** and another judgment in the case of **ISAAC ISANGA MUSUMBA and Others Versus State of Maharashtra and Others** reported in **(2014) 15 SCC 357**, learned Senior Counsel submits that an offence under Section 384 IPC cannot be said to have been made out in the kind of allegations against the petitioner. Referring to the definition of the offence 'extortion' as contained in Section 383 IPC, the Hon'ble Supreme Court has held that unless the property is delivered to the accused persons pursuant to the threat, no offence of extortion is made out and an FIR for the offence under Section 384 IPC could not have been registered by the police. It is, thus, submitted that in the present case the learned Magistrate has erred in taking cognizance under Section 384 IPC. It is further submitted that the learned Magistrate has taken cognizance also under Section 420



IPC even though there is no allegation in the complaint petition that this petitioner has cheated the complainant in any manner.

11. The complainant- O.P. No. 2 has entered appearance through Mr. Sanjay Kumar, learned Advocate. Learned counsel has opposed this application. It is submitted that the petitioner had threatened the complainant as disclosed in the complaint petition and also demanded the amount of Rs. 2 lakhs per month. Learned counsel submits that the complainant had made efforts to lodge the complaint with the Police Station but his complaint was not entertained. However, as regards the compliance with Section 154(3) Cr.P.C., learned counsel submits that after the FIR was not lodged by the Police Station, steps under Section 154(3) Cr.P.C. was not taken in terms of the judgment of the Hon'ble Supreme Court but the complaint petition was filed under Section 156(3) Cr.P.C. on affidavit. Statement has been made that in the given facts and circumstance, this Court may not exercise its' inherent power under Section 482 Cr.P.C. to quash the criminal prosecution and let the allegation be proved in course of trial.

Consideration

12. Having heard learned Senior Counsel for the petitioner as also learned counsel for the complainant-O.P. No. 2 and upon perusal of the complaint petition, this Court finds that the



complainant-O.P. No. 2 had filed the complaint before the learned Magistrate for sending a copy of the same to the Police Station under Section 156(3) Cr.P.C. In the complaint petition, however, there is no statement that the petitioner had complied with the mandate of the Hon'ble Supreme Court in the case of **Priyanka Srivastava** (supra). The relevant paragraph '30' and '31' from the judgment in **Priyanka Srivastava** (supra) are being reproduced hereunder for a ready reference:-

“**30.** In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores”

“**31.** We have already indicated that there has to be prior applications under Sections 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). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in *Lalita Kumari*¹⁵ are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”

Apparently, there is no compliance with the aforesaid paragraph.

13. Further this Court finds that in this case, cognizance has been taken under Sections 384 and 420 IPC. Section 384 IPC would be attracted only where it would be a case of an extortion in terms of Section 383 IPC. Section 383 IPC 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 person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits “extortion”.

15 *Lalita Kumari v. State of U. P.* (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524



14. It is evident on a bare reading of the said provision that the offence under Section 384 IPC would be committed only when the accused has put somebody in fear of injury and by putting that person under fear of injury induces that person to deliver any property or valuable security or anything signed or sealed which may be converted into a valuable security.

15. In the case of **ISAAC ISANGA MUSUMBA** (supra) Hon'ble Supreme Court has categorically held that unless the property is delivered to the accused persons pursuant to the threat, no offence of 'extortion' is made out. There are other judgments which are supporting the contentions of learned Senior Counsel for the petitioner. In this regard reliance has been placed on the case of **DHANANJAY ALIAS DHANANJAY KUMAR SINGH VERSUS STATE OF BIHAR AND ANOTHER** reported in **(2007) 14 SCC 768** and **Salib alias Shalu alias Salim** (supra).

16. So far as Section 420 IPC is concerned, it would be attracted only in the case of cheating as defined under Section 415 IPC. Section 415 IPC is reproduced hereunder for a ready reference:-

“415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the



person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.”

17. It is evident from a bare reading of Section 415 IPC that there must be a fraudulent intention to deceive a person right from inception on the part of the accused. In this case no such intention has either been alleged or any property has been delivered by the complainant by virtue of such act of dishonest inducement. Thus, offence under Section 420 IPC is also not made out.

18. This Court finds that the learned Magistrate has passed the impugned order in a routine and in a mechanical manner. There are ample materials in the form of official documents which are admitted documents and have not been denied. It is not disputed that this petitioner was posted as Motor Vehicle Inspector at the relevant time and the Pollution Checking Centre of the petitioner was under him for the purpose of inspection and the present case was lodged against the petitioner only during the period when he was calling upon the complainant to produce documents showing the compliances with the directions



on eight points and at least two reminders were issued by the petitioner by the time the complaint petition was presented.

19. Thus, in the given circumstances, the submission of learned Senior Counsel that the complaint has been presented with a malafide intention has got much force.

20. For all the aforesaid reasons the impugned order is set-aside and the complaint petition is quashed.

21. In result, this application stands allowed.

(Rajeev Ranjan Prasad, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	21.09.2023
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