

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.65804 of 2018

Arising Out of PS. Case No.-806 Year-2014 Thana- GAYA COMPLAINT CASE District-
Gaya

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Rajesh Kumar, son of Janak Prasad Yadav, resident of Mohalla-Badki Delha,
P.S. and P.O. Delha, District-Gaya

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Santosh Yadav, Son of Late Ram Deo Yadav, Resident of Mohalla- Badki
Delha, P.S. and P.O. Delha, District-Gaya

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal- Advocate Mr. Alok Kumar Jha- Advocate Mr. Mukund Kumar- Advocate Ms. Ekta Rani- Advocate
For the State	:	Mr. Jharkhandi Upadhyay- A.P.P.
For the Complainant	:	Mr. Prakash Chandra Jha- Advocate

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT

04-09-2023

1. Heard learned counsel for the petitioner,
learned counsel for the complainant and learned APP for the
State.

2. The learned counsel for the petitioner
submits that the present application has been filed seeking
quashing of the order dated 29.08.2018 passed by the learned
Additional Chief Judicial Magistrate-VII, Gaya in Complaint
Case No.806 of 2014, whereby the prayer of the petitioner for
discharge from the proceedings of the complaint case has been
rejected in a mechanical manner.

3. It is next submitted that the complainant



filed Complaint Case No.806 of 2014 in the Court of the learned Chief Judicial Magistrate, Gaya against the petitioner and other accused persons alleging that a Title Suit bearing No.43 of 2011 is going on in the Court of learned Subordinate Judge- 3rd, Gaya in which a witness namely, Raj Kumar has been produced for examination and cross-examination by the petitioner and other accused persons and an affidavit dated 07.04.2014 has been filed in the said case wherein address and profession has been mentioned as resident of Mohalla Barki Delha and detail of service respectively. It is next alleged that during cross-examination in Paragraph-15, the said witness had stated that he is an employee in Sanjay Gandhi Mahila College, Gaya for the last 18 years, but the President of the said college has given a certificate dated 13.05.2014 denying such fact. It is next alleged that though in the affidavit he has stated about his address as aforesaid, but actually he is not from the said location. Thus, criminal conspiracy and criminal breach of trust has been committed by the accused persons in shape of providing information in course of evidence, which is fabricated. It is next alleged that accused persons are litigants and have also made impersonation. It is next alleged that on 20.05.2014 at about 10.00 A.M., when the complainant and his witnesses were



moving near the Bus Stand, the accused persons abused and assaulted them and the petitioner also snatched golden chain from the complainant worth Rs.60,000/- and other accused snatched Rs.5500/- from the complainant. On alarm, they fled.

4. The learned counsel for the petitioner submits that from bare perusal of the allegations as alleged in the Complaint, it would manifest that the dispute is purely civil to which a criminal colour has been given. It is next submitted that even presuming what has been alleged in the complaint is true without admitting, then whether cognizance of the offence could have been taken in absence of any evidence being brought on record with regard to the allegation against the petitioner that he got a witness in the Title Suit No.43 of 2011, whose address and service was forged and fabricated based on a letter issued by the President of the said college or the President of the College had to be examined and at the same time the affidavit which is alleged to have been issued by the President of the College also was required to be tested. In absence of any endeavour to find out the truth, the cognizance, in a mechanical manner, came to be taken and subsequently, the discharge application was also dismissed as recorded herein above.

5. It is next submitted that allegation of



snatching of chain by the petitioner from the complainant is nothing but ornamental as the petitioner works in Scotland and on the date, when the alleged occurrence is said to have taken place, the petitioner was in Scotland. It is next submitted that petitioner works with Northsea Solutions Limited, a company at Scotland and is being paid handsomely and he had come to India for participating in the Title Suit No.43 of 2011 and after his evidence was over, he went back to Scotland and never came back. The learned counsel for the petitioner next submits that several cases are pending between the petitioner and the complainant and even proceeding under Section 144 Cr.P.C. has been initiated.

6. It is submitted at the cost of repetition that petitioner last visited Gaya on 14.02.2014 and left for Scotland on 18.03.2014, which is established by the seal given by the Airport Authorities on the VISA Card of the petitioner as would manifest from Annexure-6 to the quashing application. It is further submitted that when cognizance was taken and summons were issued, the police submitted a report dated 25.12.2014 (Annexure-7 to the quashing application) recording therein that petitioner is a British National and stays in Scotland and on 18.03.2014 had left for Scotland and had not come back.



7. The learned counsel for the petitioner at the cost of repetition next submits that he is not relying on the police report but on the VISA, which clearly reflects that petitioner was not in India on the date of occurrence.

8. The learned Additional P. P. along with learned counsel for the complainant opposes the quashing application, but are in a position to rebut the submissions of the learned counsel for the petitioner that petitioner on the date of occurrence was not in India as would manifest from Annexure-6 to the quashing application.

9. Considering the submission, the order dated 29.08.2018 passed by the learned Additional Chief Judicial Magistrate-VII, Gaya in Complaint Case No.806 of 2014 whereby the application of the petitioner seeking discharge was rejected, stands quashed.

(Satyavrat Verma, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	04.09.2023
Transmission Date	04.09.2023

