

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.46191 of 2023

Arising Out of PS. Case No.-899 Year-2015 Thana- GAYA COMPLAINT CASE District-
Gaya

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AJAY KUMAR SINGH S/O LATE KAMTA SINGH R/O Rananagar,
Manpur, P.S- Muffasil, Distt. and Town- Gaya, Pin- 823003.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Jitendra Kumar S/O Shiv Shankar Singh R/O Village- Mirganj, P.S-
Wajirganj, District- Gaya.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Lal Babu Singh, Advocate Mr. Nilesh Kumar Pandey, Advocate
For the Opposite Party/s :		Mr. Jagdhar Prasad, APP
For the O.P no.2	:	Mr. Anil Kumar Sinha, Advocate Mr. Vinod Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 30-04-2024

1. Heard learned counsel for the petitioner, learned
APP for the State and learned counsel for the complainant-
opposite party no.2.

2. The petitioner has filed the instant application
praying for quashing the order taking cognizance dated
8.10.2015 passed in Complaint Case no. 899 of 2015 whereby
the learned Judicial Magistrate 1st Class, Gaya was pleased to
take cognizance under section 406 of the Indian Penal Code.

3. As per the prosecution case, the complainant states
that by a written agreement he rented out his JCB machine to



the petitioner on a monthly rent of Rs. 70,000/-. It is stated that as a result of negligence by the petitioner, unknown accused persons set the JCB of the complainant on fire as a result of which both the JCB as also the tractor were destroyed. The occurrence leading to damage of the JCB took place as a result of the negligence of the petitioner. The JCB machine should have been got parked by the petitioner at a safe place. As a result of the occurrence, the complainant has undergone economic and mental stress. It is stated that Wajirganj P.S Case no. 188 of 2014 has also been registered with respect to the occurrence. As such the complaint was filed on 4.6.2015.

4. The complainant was examined on S.A. Further in support of the complaint, the witnesses Amar Shankar and Lalan Kumar were examined and on the basis of the statement of the witnesses, by order impugned dated 8.10.2015 the learned Judicial Magistrate 1st Class, Gaya was pleased to take cognizance under section 406 of the Indian Penal Code.

5. Learned counsel for the petitioner submits that accepting the allegations levelled in the complaint together with the statement of the enquiry witnesses, no offence under section 406 of the Indian Penal Code nor any other section is made out against the petitioner and filing of the instant complaint is an



abuse of the process of the Court. It is submitted that paragraph no. 8 of the complaint itself refers to Wajirganj P.S Case no. 188 of 2014 which was got registered by one Arvind Singh who happens to be the *Munshi* of the petitioner. The case was registered for an occurrence which had taken place in the night of 4th and 5th of May, 2014 when 10-15 accused persons as named in the FIR therein and having affiliation to the Maoist organization set the JCB machine on fire. The FIR being Wajirganj P.S Case no. 188 of 2014 was registered on 5.5.2014 under sections 147, 148, 149, 341, 323, 384, 435 and 427 of the Indian Penal Code wherein after investigation the case was found to be true and charge-sheet no.66 of 2015 (Annexure 4) was filed on 12.3.2015.

6. It is thus submitted by learned counsel appearing for the petitioner that the occurrence leading to destruction of the JCB machine of the complainant having taken place which led to registration of the FIR and on investigation which was found to be true, no case under section 406 of the Indian Penal Code would be made out against the petitioner. Thus the order impugned dated 8.10.2015 taking cognizance is not sustainable and thus be set aside.

7. The application is opposed by learned counsel



appearing for the opposite party no. 2. It is submitted that from the contents of the complaint it would be evident that there is no dispute with respect to the fact that an agreement was entered into between the parties and the JCB machine had been entrusted to the petitioner herein. It is as a result of negligence on part of the petitioner that led to the destruction of the JCB machine as has been narrated in the complaint resulting in loss to the complainant.

8. Having heard learned counsel for the parties and having perused the material on record, the facts not in dispute are that the complainant rented out his JCB to the petitioner on a monthly rental of Rs.70,000/- and for which an agreement was entered into between the parties, which has been brought on record as Annexure-5 to the counter affidavit of the informant. The JCB machine in question was set on fire by the accused persons having affiliation to Maoist organizations and which led to the *Munshi* of the petitioner lodging an FIR being Wajirganj P.S Case no. 188 of 2014 (Annexure-3) wherein on investigation charge-sheet (Annexure-4) was submitted on 12.3.2015 finding the case to be true against the accused persons therein.

9. The manner of occurrence leading to destruction of the JCB machine of the complainant having been found to be



true in police investigation, the next question which would arise is as to whether a case under section 406 of the Indian Penal Code is made out against the petitioner or not.

10. Section 405 of the Indian Penal Code defines criminal breach of trust while section 406 of the Code provides punishment for the same. Both sections 405 and 406 of the Indian Penal Code are quoted herein below for ready reference :-

“405. Criminal breach of trust.-

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.

406. Punishment for criminal breach of trust.- *Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”*

11. A perusal of the definition of criminal breach of



trust as quoted hereinabove would show that the essential ingredients for the same are that a person entrusted with the property or with any dominion over the property, that person should dishonestly misappropriate the property for his own use or dishonestly use or dispose of that property or willfully suffer any other person so to do in violation of any direction of law prescribing the mode in which such trust is to be discharged. Even accepting the contentions/allegations as levelled in the complaint petition together with the statement of the witnesses in course of inquiry under section 200 of the Cr.P.C., there is no doubt in the opinion of this Court that though the petitioner was entrusted with the property ie, the JCB machine, there was no dishonest misappropriation by the petitioner or conversion of the said property ie the JCB machine to his own use. The JCB machine was also not disposed of by the petitioner in violation of any direction of law or contract etc.

12. In the opinion of the Court, the material in the complaint do not make out any case of criminal breach of trust against the petitioner and thus the order impugned dated 8.10.2015 holding that a *prima facie* case is made out against the petitioner under section 406 of the Indian Penal Code, in the opinion of the Court is not sustainable and, therefore, the



order impugned is fit to be set aside.

13. The order dated 8.10.2015 passed in Complaint Case no. 899 of 2015 (Tr. no. 197 of 2015) by the learned Judicial Magistrate, 1st Class, Gaya is hereby set aside.

14. The application is allowed.

(Partha Sarthy, J)

Shiv/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

