

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.67442 of 2022**

Arising Out of PS. Case No.-24 Year-2019 Thana- BIHAR District- Nalanda

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1. Anil Upadhya @ Anil Kumar @ Anil Kumar Upadhyay S/O Yogendra Upadhyay Resident Of Village- Ghosrawan, P.S.- Giriyak, District- Nalanda.
 2. Ashutosh Kumar @ Ashutosh Kumar Upadhyay S/O Bhola Trivedi Resident Of Village- Uttarthu, P.S.- Bind, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Raj Kumar @ Raj Kumar Prasad S/O Bhola Prasad Resident Of Village- Majhanpura, P.O.- Karanja, P.S.- Vikram, District- Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Rabindra Prasad Singh, Advocate
For the Opposite Party/s : Dr. Ajeet Kumar, APP

**CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT**

Date : 04-07-2024

1. Heard learned counsel for the petitioners and learned APP for the State. No one appeared on behalf of opposite party no. 2.

2. This application has been preferred against the order dated 31.3.2022 passed in Cr. Revision no. 86 of 2021 by the learned Sessions Judge, Nalanda at Biharsharif, whereby the revision application preferred by the petitioners against the order dated 10.11.2020 of the learned Chief Judicial Magistrate, Nalanda at Biharsharif in Bihar P.S. Case no. 24 of 2019 taking cognizance for the offence punishable under sections 341, 323, 385, 504 and 34 of the Indian Penal Code, was dismissed.



3. The prosecution case based on the written statement dated 11.1.2019 of the opposite party no. 2 is to the effect that he is posted as Tuberculosis Assistant in the District Tuberculosis Centre, Nalanda at Biharsharif and is working at Primary Health Centre (P.H.C), Giriyak. In spite of the direction of the Officer concerned, he was not paid arrears of difference of his enhanced salary. It is stated that on his going and asking the petitioners for his arrears of salary, the petitioner no. 1 made a demand of Rs. 20,000/-. On the opposite party no. 2 having resisted from paying the said amount, it is stated that both the petitioners abused, assaulted and also threatened him that he would be made to leave Nalanda. The informant states that one Ashok Yadav was present at the time of occurrence.

4. On the statement of opposite party no. 2, Bihar P.S. Case no. 24 of 2019 was registered on 11.1.2019 under sections 341, 323, 385, 504 and 34 of the Indian Penal Code.

5. Learned counsel for the petitioners submits that the investigation was taken up by the police and charge-sheet no. 82 of 2019 dated 29.3.2019 was submitted under sections 341, 323, 385, 504 and 34 of the Indian Penal Code. Cognizance was taken on 10.11.2020 by the learned Chief Judicial Magistrate, Nalanda at Biharsharif. The revision application



preferred against the said order was dismissed vide order dated 31.3.2022 against which the instant application has been preferred.

6. It is further submitted by learned counsel for the petitioners that the petitioners have been falsely implicated in the case which has been lodged with false and incorrect allegations in retaliation to the F.I.R lodged by the petitioner no.1 being Laheri P.S. Case no. 171 of 2019 under sections 341, 323, 353, 379 and 392 of the Indian Penal Code wherein the opposite party no. 2 of the instant application is an accused. It is further submitted that so far as the allegations against the petitioners are concerned, at the relevant date and time of the alleged occurrence, the petitioners were discharging their duties as Clerk in the District Tuberculosis Centre, Nalanda at Biharsharif. No sanction order has been obtained for proceeding against the petitioners. No *prima facie* case is made out against the petitioners and the false implication is as a result of old enmity between the parties. The order taking cognizance as also the revision application preferred by the petitioners against the same are both illegal, not sustainable and fit to be set aside.

7. The application is opposed by learned APP for the State.



8. Having heard learned counsel for the parties and having perused the material on record, the Court finds that so far as the contents of the F.I.R are concerned, not only both the petitioners are named therein, but there is specific allegation against them that the petitioner no. 1 having made a demand of Rs. 20,000/- as illegal gratification, on protest to the same by the opposite party no. 2, both the petitioners are said to have abused, assaulted and of having threatened the opposite party no. 2.

9. On perusal of the contents of the case diary, it further transpires that the informant and other witnesses have supported the allegation against the petitioners. It may be observed here that so far as obtaining sanction is concerned and the defense of *alibi* raised by the learned counsel for the petitioners is concerned, these points may be taken by the petitioners at the appropriate stage.

10. The Court finds that there is *prima facie* material against the petitioners and the learned trial Court rightly took cognizance in the case against both the petitioners. The learned lower Appellate Court rightly rejected the revision application preferred by the petitioners. The Court finds no illegality in the order taking cognizance nor in the order of the



learned Sessions Judge rejecting the revision application preferred against the same.

11. There being no merit in the instant application, the same is dismissed.

(Partha Sarthy, J)

Harsh/-

AFR/NAFR	NAFR
CAV DATE	6.5.2024
Uploading Date	5.7.2024
Transmission Date	5.7.2024

