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**Court :** Patna

**Decided On :** Feb-23-2007

**Judge :** M. Saran, J.

**Acts :** Code of Criminal Procedure (CrPC) - Sections 202, 203, 204 and 482;  
Indian Penal Code (IPC) - Sections 147, 323, 343, 499, 500 and 506

**Appeal No. :** Cr. Misc. No. 26578 of 2003

**Appellant :** Ashok Kumar Singh

**Respondent :** The State of Bihar and anr.

**Disposition :** Application dismissed

**Judgement :**

**M. Saran, J.**

1. This application under Section 482 of the Code of Criminal Procedure ( in short as Code) has been filed for quashing the entire proceeding and order dated 2.9.2003 passed by Sri Diwakar Mishra, Chief Judicial Magistrate, Saharsa in complaint case No. 410/2003 whereby and whereunder he has taken cognizance under Sections 147, 323, 343, 506 of Indian Penal Code.

2. It appears that complainant/OP No. 2 Shailendra Kumar Yadav filed a petition of complaint vide complaint case No. 410/2003 in the court of CJM, Saharsa on

28.5.03 against the present petitioner and three others for the occurrence dated 15.5.2003 and 20.5.2003. The case of complainant, in short, is that a case was registered at Saharsa police station regarding kidnapping of Rohit Kumar Jha against unknown persons. It is said that petitioner and one other accused started pressurizing the complainant to give name of Kishore Kumar Munna as kidnapper before the police and court as he was a candidate in the last assembly election against the petitioner. The complainant refused to oblige them and so he was threatened by the accused persons. It is said that he was kept in confinement in the house of the petitioner for five days during which he was physically and mentally tortured. It appears that complainant was examined on S.A and during enquiry under Section 202 of the Code five witnesses were examined and the learned Magistrate after being satisfied that there was sufficient material for proceeding further against the accused persons for the offences punishable under Sections 147, 323, 343 and 506 of the IPC took cognizance and ordered to issue summons against them. Against the said order the petitioner has preferred the present application for quashing before this Court.

3. It has been contended on behalf of the petitioner that at the relevant time he was Cabinet Minister. He had no programme of Saharsa. He had never visited Saharsa during the period of occurrence. He further contended that there is delay in filing the complaint and place of occurrence is vague. He also contended that the present case has been filed at the instance of Kishore Kumar Munna to malign the image of the petitioner. Learned Counsel pointed out that witnesses examined during enquiry are all residents of different places Learned Counsel in support of his argument placed reliance on the following decisions:

(i) : 1997 CriLJ2976 and

(ii) 1990 (6) SCC 263.

4. On the other hand learned Counsel for OP No. 2 supported the impugned order and submitted that no interference is required. He submitted that delay in filing the complaint is well explained in the complaint petition.

5. At the stage of Section 203 or 204 of the Code the only thing which the Court is required to consider as to whether there are sufficient grounds for proceeding further against the accused persons. The expression sufficient ground relates to the facts which the complainant places before the court. It is settled view that at this stage the court is not expected to weigh the evidence meticulously. A complaint cannot be dismissed merely because it is belated action or the witnesses are chance witnesses. Such a matter can be dismissed only when shown that the proceedings cannot terminate successfully in a conviction. It appears from the impugned order that the learned Magistrate after being satisfied that there was sufficient ground for proceeding further against the accused persons took cognizance.

6. The Hon'ble Supreme Court in the case of Satrugan Prasad Sinha v. Rajbhar Surajmal Rathi reported in : 1997 CriLJ212 has observed that 'at this stage we cannot embark upon weighing the evidence and come to any conclusion to hold, whether or not the allegations made in the complaint constitute an offence punishable under Section 500 of the Indian Penal Code. It is settled legal position that a court has to read the complaint as a whole and find out whether allegations disclosed constitute offence under Section 499 triable by the Magistrate. The Magistrate prima facie came to the conclusion that the allegations (Sic) come within the definition of defamation under Section 499 of the IPC and could be taken cognizance of. Prima facie We think that at this stage it is not a case warranting (Sic) of complaint filed in the court of Judicial Magistrate, Nasik'.

7. Then the Apex Court in the case of State of Jammu & Kashmir v. Romesh Chandra and Ors. reported in : 1997 CriLJ2976 has observed that it is now settled law that the charge sheet constitutes prima facie evidence constituting the offence for proceeding further in the matter. Necessarily, therefore, the court has to look into the relevant law and the allegations made in the charge sheet and then consider whether any offence has been committed to frame charges for trial before discharging the accused.

8. After reading the allegations made in the complaint and also the statement of witnesses recorded during enquiry under Section 202 of the Code at this stage, I

think that it will not be proper to quash the complaint or the order of cognisance. The impugned order indicates application of judicial mind and satisfaction of the Magistrate and I see no reason to differ from the view taken by the learned Magistrate.

9. In the facts and circumstances, I find no error in the impugned order.

10. This application is, accordingly, dismissed.

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