

Hriday Rai and ors Vs. State of Bihar and anr

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Court : Patna

Decided On : May-16-2012

Appellant : Hriday Rai and ors

Respondent : State of Bihar and anr

Judgement :

IN THE HIGH COURT OF JUDICATURE AT PATNA Criminal Miscellaneous
No.28771 of 2008

===== 1.Hriday

Rai 2. Subhash Chandra Prasad 3. Prashant Kumar 4. Ashok Kumar

Petitioner/s Versus 1. State Of Bihar 2. Pankaj Kumar Nirala Opposite

Party/s =====

Appearance : For the Petitioner/s : Mr. Dhirendra Nath Jha For the State : Mr.

Ram Sevak Choudhary,APP

===== CORAM:

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

16. 01-2012 Heard learned counsel for the parties. This application under Section 482 of the Code of Criminal Procedure is to quash the order dated 7.7.2007 passed in Complaint Case No. 371 of 2007 by Sri Raman Kumar, Judicial Magistrate Ist Class, Katihar, summoning the accused named in the complaint petition including the petitioners on inquiry, finding prima-facie case under Sections 323,427 and 418 of the Indian Penal Code. It appears that Opposite

party No.2 Pankaj Kumar Nirala filed a complaint petition numbered as Complaint case No. 371 of 2007 alleging therein that he had got electric connection in his name on 4.6.2002 and was paying regular Electricity bill 2 Patna High Court Cr.Misc. No.28771 of 2008 (6) dt.16-01-2012 2/4 bearing consumer No. BC-DS-4595. On 13.2.2007 all officials of the Electricity department without making any query, entered into his house and cut the cable about 25 meters connected in between Pole and meter and they took the same along with CFL bulbs in spite of making the protest by the family members, they abused giving threatening of arrest. It is further alleged by Opposite party No.2 that when he returned from school, came to know about the incident and approached the Assistant Engineer of Electricity Department with all papers then he was asked to deposit the money for connection. After filing the complaint petition by Opposite party No.2 on inquiry, the Court of Sri Raman Kumar summoned the accused including petitioners finding prima facie case under Sections 323,427 and 418 of the Indian Penal Code. Order dated 7.7.2007, which is impugned in this application. Learned counsel appearing on behalf of the petitioners made submission that the petitioners are the officials of the Electricity Department, In fact on 13.2.2007 in course of raid of several consumers, the house of Opposite party No.2 Pankaj Kumar Nirala was also raided. In that course Opposite party No.2 was found using the electric power putting the Toka. Thereafter an First Information Report numbered as Katihar 3 Patna High Court Cr.Misc. No.28771 of 2008 (6) dt.16-01-2012 3/4 Sadar P.S. case No. 91 of 2007 was lodged under Section 379 of the Indian Penal Code and section 39/44 of the Indian Electricity Act against three persons, who were found using illegal electric power including Opposite party no.2. On the next date of the raid an application was received from Opposite party no.2 making the complaint about disconnection of the electric connection. On inquiry made by the petitioner No.1 Hriday Rai it was found that earlier there was connection in the name of the father of Opposite party no.2 bearing Consumer No. BC/DS/1554 and after becoming due, that connection was dis-connected and fresh connection was taken by Opposite party No.2 in his name bearing consumer No. BC/DS/4595, but inspite of that, electric power was being used by putting the Toka. As such in counter blast of Katihar Sadar P.S. case No. 91 of 2007 lodged by petitioner no.1 against Opposite party no.2 Pankaj Kumar Nirala and two other

Opposite party no.2 has filed the complaint case No. 371 of 2007 against all officials of the Electricity Department. From the complaint petition, it appears that the allegation is of cutting the cable in between the meter of Opposite party No.2 and the pole by the officials of the Electricity Department including the petitioners without any reason and also abusing the 4 Patna High Court Cr.Misc. No.28771 of 2008 (6) dt.16-01-2012 4/4 family members of Opposite party No.2. Annexure-1 shows that on the basis of the written report of petitioner no.1 Hirday Rai Katihar Sadar P.S. case No. 91 of 2007 was lodged against Opposite party no.2 and two others for committing theft of electric power on 13.2.2007 and later on the Opposite party no.2 filed a complaint case No. 371 of 2007 against the six persons including the petitioners who are officials of the Electricity Department in said case. Under the aforesaid facts and circumstances of the case, the summoning order dated 7.7.2007 passed in complaint case No. 371 of 2007 by Sri Raman Kumar Judicial Magistrate, Ist Class, Katihar as lodged by Opposite party No.2 Pankaj Kumar Nirala against the accused-petitioners appears to abuse of the process of the Court. Accordingly the impugned order dated 7.7.2007 summoning the accused-petitioners by Judicial Magistrate, Ist Class, Katihar is quashed and this application is allowed. (Rajendra Kumar Mishra, J) Arun Kumar/-

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