

(1999) 07 PAT CK 0119

In the Patna High Court

Case No : Criminal Miscellaneous No. 15504 of 1998

Harendra Kumar

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 19-07-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 398

Citation : (1999) 3 PLJR 267

Hon'ble Judges : Nagendra Rai, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Nagendra Rai, J.—Heard counsel for the Petitioner. No body appears on behalf of the opposite parties inspite of valid service of notice.

2. The present application has been filed against the order dated 21.7.98 passed by Sri Mathura Prasad Mandal, Additional Chief Judicial Magistrate, Danapur in Complaint Case No. 129(c)/98 by which he has dismissed the complaint petition filed by a practising Advocate of this Court against opposite party Nos. 2 to 4.

3. According to the allegation, the Complainant was going to his Sasural along with his family members by a car. When the car reached near Kab Lakhpur (Chauraha), the Gypsy of the opposite party No. 2 also reached near the car of the complainant. Opposite party No. 2 and other constables got down from the vehicle and the complainant was directed to produce the papers. When the complainant asked the driver to show him the relevant papers, one of the body guards of the Dy.S.P. caught hold and started beating by fists and slaps and took out Rs. 500/- from his pocket and on protest he was assaulted by other constables.

4. The complainant examined three witnesses besides his own statement recorded u/s 200 Code of Criminal Procedure and all the witnesses have supported the complainant's version. Thereafter the court below has dismissed

the complaint petition.

5. After going through the material on record it appears that the Additional Chief Judicial Magistrate has proceeded in the matter as if he is holding a trial. Learned Magistrate lacks elementary knowledge of law. The Magistrate at this stage ought to have seen whether prima facie case is made out or not and it should not have seen whether allegations have been proved or not. The Magistrate has written a full fledged judgment which is not permissible in law.

6. Accordingly, the impugned order is set aside and the matter is remitted to Additional Chief Judicial Magistrate, Danapur for further enquiry as provided u/s 398 Code of Criminal Procedure and to pass an appropriate order in accordance with law. If the said Additional Chief Judicial Magistrate is posted there, the matter should be transferred to some other Magistrate and if he is not posted, then the matter should be disposed of by the Additional Chief Judicial Magistrate at present functioning.

7. With the above observation/directions, this petition is allowed.