

> CRIMINAL APPEAL NO. 933 OF 2011

ITEM NO.4

COURT NO.7

SECTION IIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No. 933/2011

ABDUL RAHIM

Appellant(s)

VERSUS

SHAHID IQUBAL KHAN & ANR.

Respondent(s)

Date : 25/02/2015 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA
HON'BLE MR. JUSTICE ABHAY MANOHAR SAPRE

For Appellant(s)

Mr. Himanshu Shekhar, A.O.R.

For Respondent(s)
For RR 2/State

Mr. Chandan Kumar, Adv.
Mr. Gopal Singh, A.O.R.

For RR No. 1

Mr. Ambhoj Kumar Sinha, Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard learned counsel for the appellant and the
respondent.

The appeal fails and is, accordingly,
dismissed.

[KALYANI GUPTA]
COURT MASTER

[SHARDA KAPOOR]
COURT MASTER

Signature Not Verified

Digitally signed by
Kalyani Gupta

[SIGNED ORDER IS PLACED ON THE FILE.]

Date: 2015.02.28

11:56:21 IST

Reason:

CRIMINAL APPEAL NO. 933 OF 2011

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 933 OF 2011

ABDUL RAHIM

.....

APPELLANT

VERSUS

O R D E R

Heard learned counsel for the appellant and the respondent.

The appellant is aggrieved by the order impugned herein by which the High Court on finding that the learned Magistrate while issuing summons in the Complaint Case No. 247C of 2000 while taking cognizance of the offence under Sections 323 and 504 of the Indian Penal Code as well as Section 135A of the Representation of People Act, 1951, dated 31st January, 2005, failed to apply its mind and thereby the High Court has also found that the Revisional Court namely, Fourth Additional Sessions Judge East Champaran at Motihari in

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also Criminal Revision No. 381 of 2001/89 of 2004
the bluntly rejected the Revision preferred by
So respondent in its order dated 10th September, 2001.
the holding, the High Court examined the case of
appellant as to the correctness of the action of the
trial court as well as Revisional Court found that it
was a case of abuse of the process of the Court and
consequently the cognizance taken by the learned trial
judge and the summons issued cannot be sustained.

Having heard learned counsel for the appellant and having bestowed our serious consideration to the facts set out in the impugned order, we find that there was eventually nil material before the trial court to

as substantiate the Complaint Case No. 247C of 2000
the against the respondent herein. Respondent was
Returning Officer of Booth No. 79 and functioning as
such on 22nd February, 2000. Indisputably, at the behest
of the Presiding Officer of the same booth a complaint
was lodged with the Police in the Motihari Town Police
Station in Case No. 48 of 2000 on 22 nd February, 2000
which was registered by the Police and
after the investigation charge was also lodged against
the appellants apart from one Mohd. Rehman supported
by Annexure-7 before the High Court. The allegation was

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that the said Mohd. Rehman forcibly entered the Voting
Booth No. 79 at about 3::00 P.M. along with his henchmen
under the garb of voters and poured ink in the ballot
box and fled away from there. The respondent as
Returning Officer as per Annexure-4 to the file
reported to the Chief Electoral Officer, Bihar Patna,
recommending re-polling and on the basis of the Report,
re-polling was held on 24th February, 2000. That
apart, on behalf of the appellant it was claimed that he
was the Polling Agent of the Bhartiya Janata Party (BJP)
and that he was beaten up by the respondent with the
help of the Police. But nothing was placed before the
trial court to support the said stand and that there was
no medical report also.

Having regard to such absence of relevant basic
materials to support the complaint of the appellant, the
High Court rightly found that cognizance taken based on
such frivolous complaint ought not to have been
entertained especially when it came to light that

respondent was the Returning Officer and that there was a mele created at the instance of the appellant's brother in the Polling Booth and as Returning Officer, he submitted a Report for holding re-poll which was accepted by the Chief Electoral Officer by holding the

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re-poll on 24th February, 2000. The High Court was, therefore, well-justified in stating that the present Complaint filed by the appellant was by way of counter complaint belatedly to thwart the complaint registered in Motihari Town P.S. Case No. 48 of 2000.

We, therefore, do not find any merit in this appeal. The appeal fails and is, accordingly, dismissed.

.....J
[FAKKIR MOHAMED IBRAHIM KALIFULLA]

.....J
[ABHAY MANOHAR SAPRE]

NEW DELHI
FEBRUARY 25, 2015.

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