

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.12799 of 2013

Arising Out of PS.Case No. -846 Year- 2005 Thana -NAWADAH COMPLAINT CASE District- -

1. Rajesh Kumar @ Babloo son of Pannalal Gupta.
2. Rakesh Kumar @ Pintu son of Pannalal Gupta.
3. Pannalal Gupta son of late Devi Prasad,
All resident of Mohalla L.I.G. H 100/69, Lohiya Nagar Housing Colony,
P.S. Kankarbagh, District – Patna.

.... Petitioners

Versus

1. The State of Bihar
2. Om Prakash Gupta son of Sita Ram Sao, resident of Mathuriya Muhalla
Golapur, P.S. Laheri, District Nalanda (Biharsharif) at present Manisa
Jewelers, Sonarpatti Road, Nawada, P.S. Nawada, District-Nawada.

.... Opposite Parties

Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr. Shardanand Jha (App)

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

4 09-07-2015 Heard learned counsel Mr. Gauri Shankar Prasad on
behalf of the petitioners and learned A.P.P. for the State.

2. Notices were issued in admission matter to the
opposite party no.2, who is complainant. In spite of service of
notice opposite party no.2 has not appeared.

3. It appears that the complainant-opposite party
no.2 filed the complaint case alleging that the petitioner no.3 on
the date of occurrence ordered his two sons, petitioner nos.1 and
2 to kill him at the place of occurrence. On the order of
petitioner no.3, the petitioner no.1 pointed a pistol to the
complainant saying that “you have got a complaint case filed

against the petitioner and then on the point of pistol he snatched Rs.300/- and all of them went away saying that if you will not withdraw the complaint case then you will be killed and your jewellery shop shall be looted.”

4. The learned counsel for the petitioners submitted that the complainant is the Sarhu of petitioner no.1 and the wife of petitioner no.1 has filed a complaint case under Section 498A of the Indian Penal Code, therefore, for giving double pressure this complaint case has been filed. According to the learned counsel, admittedly the petitioners have a jewellery shop at Nawada and it is not expected from them to commit theft of Rs.300/- on the point of pistol from the complainant, particularly when there is enmity because of the fact that the sister-in-law of the complainant has filed a complaint case under Section 498A of the Indian Penal Code. The learned counsel further submitted that the allegation made in the application is absurd, vexatious and no prudent person can rely on the occurrence narrated by the complainant.

5. Perused the complaint application and the order taking cognizance. Admittedly the complainant is the Sarhu of petitioner no.1. Petitioner no.3 is father of petitioner nos.1 and 2, who retired from government service in the year 2003 and

further the admitted position is that they have got a jewellery shop at Nawada. It is also admitted fact that a complaint case under Section 498A of the Indian Penal Code has been filed by the wife of petitioner no.1, who is sister-in-law of the complainant. The question is whether it is expected from jewellery owner and a retired government employee aged about 70 years along with his two sons will snatch Rs.300/- on the point of pistol.

6. The Hon'ble Supreme Court in the case of **Shakson Belthissor Vs. State of Kerala, (2009) 14 SCC 466** has held that the High Court should exercise the jurisdiction under Section 482 Cr.P.C. to prevent the abuse of process of the Court but such a power can be exercised only when the complaint filed by the complainant or the charge sheet filed by the police did not disclose any offence or when the said complaint is found to be frivolous, vexatious or oppressive.

7. In the present case as has been stated above the occurrence narrated by the complainant cannot be relied upon and I am of the view that the complaint is nothing but a frivolous, vexatious complaint filed by the complainant only to give pressure on the petitioners and, therefore, if it is allowed to continue, it will be nothing but abuse of process of the Court.

Therefore, in view of my above discussion, I, accordingly, quash the order dated 07.03.2006 passed by Judicial Magistrate, Nawada in Complaint Case No.846 of 2005, Trial No.3200 of 2005. Thus, this criminal miscellaneous application stands allowed.

(Mungeshwar Sahoo, J)

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