

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No. 5123 of 2013**

Arising out of PS.Case No. -411 Year- 2012 Thana -PATNA COMPLAINT CASE District- -Patna  
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1. Rajnish Kumar, Son of Sri Rabindra Kishore Prasad.
2. Rabindra Kishore Prasad, Son of Late Mahendra Kishore Prasad.
3. Dhiraj Kumar, Son of Rabindra Kishore Prasad.

All resident of Village Sonaru, P.O.+P.S. Fatwah, District Patna.

.... .... Petitioners

Versus

1. The State of Bihar.
2. Anita Devi, Wife of Dinanath Prasad, Resident of Village Sonari, P.S. Fatuha, District Patna.

.... .... Opposite Parties  
=====

**Appearance :**

For the Petitioners : Shri Shailendra Kumar Sinha, Advocate  
Shri Rajesh Sinha, Advocate

For O.P. No. 2 : Shri Sunil Kumar Pathak, Advocate

For the State : Shri Aditya Nr. Singh, APP  
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**CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA**  
**ORAL ORDER**

4      05-05-2015                      Heard Shri Shailendra Kumar Sinha, the learned counsel appearing on behalf of the petitioners and Shri Sunil Kumar Pathak, the learned counsel appearing on behalf of the complainant.

The petitioners have been summoned by an order passed on 29.08.2012 in Complaint Case No. C.A. 411 of 2012 to stand trial for committing offences under Sections 385, 323 and 506 of the Indian Penal Code. The petitioners seek the quashing of the order and thereby the prosecution which was initiated by

the impugned order.

As may appear, a complaint petition was filed by the opposite party no. 2 alleging that the petitioners came to the house of the complainant where she was present with her son Chandan Kumar and started taking away the bricks that had been stacked on the land pertaining to Khata No. 162, Plot No. 768 measuring 2 Kathas which land had been purchased allegedly by the complainant by a registered deed of sale. It was stated that when the act of the petitioners was objected to by her, petitioners started threatening her and started demanding Rs. 1,00,000/- as *Rangdari* if she was ever willing to construct a house on the above noted plot and further alleged that they will never allow the complainant to start construction work. In that connection it was stated that petitioner no. 1 Rajnish Kumar put a pistol on the person of the complainant and gave out that if the lady was not ready to pay up the extortion money then she should abandon the land and should never come over it. When her son came to intervene the lady and her son were also assaulted by fists and slaps as a result of which both of them were hurt on different parts of their respective bodies. It was alleged lastly that petitioner no. 1 Rajnish Kumar fired blank and threatened that he would not spare the complainant and while the lady was in a state of shock and fear she was relieved of Rs. 20,000/- from her purse. The lady stated

that she walked off of the place and stayed at some distance to see that the bricks were taken away and were further stored in the under construction house of the accused persons. The last allegation which appeared in the complaint petition was that the value of the bricks, taken away by the accused persons, was Rs. 25,000/- and that of sand was Rs. 5,000/- which was also taken away.

As usually happens in such matters, the complainant was examined on S.A. and three witnesses were also produced before the learned Judicial Magistrate, Patna City during the enquiry under Section 202 Cr.P.C. after which the impugned order of summoning was passed by Shri Nitin Kaushik, Judicial Magistrate, 1<sup>st</sup> Class, Patna City.

It was contended by the learned counsel appearing on behalf of the petitioners that prior to the filing of the complaint petition, one of the petitioners, namely, Rabindra Kishore Prasad had lodged a report with Fatuha police station against Deena Nath Prasad @ Deena Gope, the husband of the complainant and one Munga Gope for threatening of dire consequences when the petitioner was constructing his house on the same plot which is mentioned in the complaint petition unless the petitioners had parted with an area of 2 Kathas of the plot in favour of the said Deena Nath Prasad @ Deena Gope. Not only that the said Deena



Nath Prasad @ Deena Gope held out threats and it was patently absurd and inherently improbable that under such a situation the petitioners who were out and out outsiders should have gone to the house of the complainant to commit the offence. It was contended that the date of occurrence of Fatuha P.S. Case No. 5 of 2012 instituted on the written report of petitioner Rabindra Kishore Prasad was 07.01.2012 and that of the petition of complaint was 29.04.2012, i.e., after more than three months of the lodging of the report by petitioner Rabindra Kishore Prasad. Submission also was that the husband of the complainant was a dreaded criminal who was subsequently murdered who revelled in similar sort of activities. Submission also was that the land was purchased by the petitioners from the rightful owners and it was by way of putting criminal pressure to humiliate them that a false charge was slapped by instituting the complaint petition.

Shri Sunil Kumar Pathak, learned counsel appearing for the complainant has submitted that a valid cognizance order should not be disturbed and whatever has been submitted is the prospective defence of the petitioners which could not be considered at this stage.

It is true that a defence has to be considered only at the appropriate stage of a trial and even if it was strong one, it could not be considered for quashing the prosecution. But when it



appears to the Court from some of the admitted documents or some records which could be bilateral in nature that there were circumstances pointing out the improbability of the allegations or its absurdity and further, if the Court finds that the purpose could be ulterior and not sanctified, like, the one to get justice, the Court has to intervene to scuttle out such cognizance orders and prosecution. Inherent improbability and patent absurdity is recognized to be one of the grounds for quashing the prosecution or even the complaint petition or the First Information Report even if the contents of the documents were indicating commission of some offence or the other.

While I was perusing the records I found that the First Information Report of the case which was lodged by petitioner Rabindra Kishore Prasad was instituted on the basis of his written report on 08.01.2012. The complaint was filed on 30.04.2012 and it was stated in the complaint petition filed by opposite party no. 2 that the occurrence had taken place on 29.04.2012. The First Information Report lodged by petitioner Rabindra Kishore Prasad was registered for committing offences under Sections 384, 504 and 506/34 of the Indian Penal Code over three months prior to the filing of the complaint petition by opposite party no. 2. I am not concerned with the statements of facts which were made by petitioner Rabindra Kishore Prasad in

his written report but what convinces is that there was a report for attempting to commit extortion and the petitioners who were outsiders and were constructing their house were not supposed to go after three months of lodging the report to commit the high handed acts complained against them. This appears the most absurd proposition which convinces me that the acts alleged are inherently improbable.

It has been pointed out time and again by this Court to the magistracy of the state with reference to Rule 31 of the Criminal Court Rules framed by the Court that the examination of the complainant and the witnesses present, is not to be a mere form, but an intelligent enquiry into the subject-matter of the complaint carried far enough to enable the Magistrate to exercise his judgment as to whether there is or is not sufficient ground for proceeding. However, what appears the unfortunate part of the judicial proceedings under Section 202 Cr.P.C. is that the Magistrates are acting mechanically and do not put their mind to the facts of the case to find out as how truthful could be the allegations which were made by the complainant in the complaint petition. While perusing the papers available to me on this petition, I had the opportunity of looking to the copies of the deposition sheets of three witnesses who were examined during enquiry under Section 202 Cr.P.C. The learned Magistrate who



was holding the enquiry had indeed put a couple of questions to each of the three witnesses but it appears that he was observing the formality only than holding the enquiry as per the direction of the Court conveyed through Rule 31 of the Criminal Court Rules. When the court was directing to hold intelligent enquiry, the court was conveying to the magistracy of the state to be involved with the facts of the case by having a full grasp of the facts stated in the complaint petition in order to reaching to the root of the matter to find out the truth. It has time and again been pointed out that issuing summons is a very serious job because it ultimately affects the liberties of the parties who had been asked to appear before a court. But the magistracy of the state is so insensitive to the observations of the courts that they appear not paying appropriate heed to these expositions of law as may appear from *Pepsi Foods Ltd. & Anr. Vs. Special Judicial Magistrate & Ors.*, reported in (1998) 5 SCC 749. If the learned Magistrate could have involved himself and could have imagined situation then only he could know what ultimately came out of the enquiry. The learned Magistrate did not make any endeavour to find out as to what could be the reality or what could be the absurdity in the petition of complaint and the allegations made there through.

I have already held that the scenario presented before this Court makes the present petition and the allegations

containing therein inherently improbable and patently absurd. The reasons for filing the complaint petition is also otherwise than what I have just noted. The husband of the complainant had indulged into extortion by asking the petitioners to hand over 2 Kathas of land to him else to quit from there. The real reason, thus discerned by me, appears not to get justice rather to misutilize the forum of justice so as to humiliating the petitioners.

In the result, the petition succeeds and the same is allowed. The order of summoning dated 29.08.2012 passed in Complaint Case No. C.A. 411 of 2012 is hereby quashed.

**(Dharnidhar Jha, J.)**

Sanjay/-

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