

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.11999 of 2013

Arising Out of PS.Case No. -56 Year- 2007 Thana -PATRAKARNAGAR District- -

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1. Durga Nand Jha, S/o Kulakant Jha, Resident Of Koriahi, P.S.- Sursand, District- Sitamarhi.
2. Deva Nand Jha, S/o Kulakant Jha, Resident Of Koriahi, P.S.- Sursand, District- Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar
2. Sushila Jha, W/o Shobha Nand Jha, Resident Of Koriahi, P.S.- Sursand, District- Sitamarhi. At present Road No.2, Sanjay Nagar, Postal Park, P.S.- Jakanpur, District- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

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

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 21-05-2015 Heard learned counsel Mr. Gajendra Kumar Jha on behalf of the petitioners and learned counsel Mr. Sanjay Prasad for the complainant-opposite party no.2.

2. This criminal miscellaneous application has been filed under Section 482 Cr.P.C. for quashing the order dated 10.12.2012 whereby the learned Judicial Magistrate, 1st Class, Patna rejected the application for discharge in Complaint Case No.2922(C) of 2009 arising out of Patrakar Nagar P.S. Case No.56 of 2007.

3. It appears that earlier for missing the son, namely, Kumud Ranjan Jha, a sanha was lodged by the complainant on



25.01.1999 alleging that her son was traceless from 15.01.1999. She alleged that earlier also he was going out of the house and was returning but this time he has not returned. Thereafter for the first time a complaint case was lodged in the year 2005 by the complainant alleging that her son Kumud Ranjan Jha has been kidnapped by the petitioners, who are her bhaisur and devar. The said complaint case was sent to the police for registering F.I.R. in the year 2007 then Patrakar Nagar P.S. Case No.56 of 2007 was registered. The police after investigation finding no material against the petitioners submitted final form. Then after six months the complainant filed a protest petition and the court below treated this protest application as a complaint case and then examined witnesses under Section 202 Cr.P.C. On the basis of the evidences of these witnesses the court below has taken cognizance. The petitioners appeared and filed application for discharge on the ground that there is no material against them. The said application has been rejected by the impugned order.

4. The learned counsel for the petitioners submitted that the occurrence is of the year 1999. For the first time the complaint was lodged in the year 2005 and the only allegation is that the son was seen with these petitioners. Except this allegation there is nothing on record against the petitioners. The police



recorded the statements of various witnesses and found that the son of the complainant was being assaulted by the complainant herself and, therefore, the complainant's son was fleeing away from the house and thereafter the complainant was bringing him after search. The petitioners are in government service and posted at Singrauli and Dhanbad and according to the witness as has been recorded by the police under Section 161 Cr.P.C. these petitioners never came to the house of the complainant. Only on suspicion and the evidence of the daughter of the complainant to the effect that the petitioners were watching the daughter and son of the complainant and that on the evidence of the neighbour that she had seen on 15.01.1999 the complainant's son with these petitioners that too after more than 11 years if the petitioners are asked to face the trial, it will be nothing but an abuse of process of court.

5. On the other hand, the learned counsel appearing on behalf of the complainant-opposite party no.2 submitted that at this stage the court cannot appreciate the evidences and even if there is suspicion against the petitioners on the basis of that suspicion also, the charge can be framed and, therefore, the learned court below has rejected the application for discharge. Opposite party no.2 has filed counter affidavit annexing the copies of the statements of the witnesses examined under Section 202



Cr.P.C. According to the learned counsel, the neighbour has categorically stated that on 15.01.1999 the son of the complainant was seen going with the petitioners. Further the daughter of the complainant also has categorically stated that prior to that the petitioners were watching her and her younger brother. Therefore, these create strong suspicion about the commission of the offence by the petitioners. Since there is no dispute between the parties, there is no question of false allegation against the petitioners arises. On these grounds the learned counsel submitted that this criminal miscellaneous application be dismissed.

6. Perused the complainant's case, sanha lodged by the complainant on 25.01.1999, complaint filed in the year 2005 and the protest petition filed in the year 2009. I also perused the statements of the witnesses examined under Section 202 Cr.P.C. It appears that in sanha there is no statement of the complainant against these petitioners. The complaint has been filed in the year 2005. The police after investigation filed final form finding that complainant herself was torturing her son. In sanha she herself has alleged that her son frequently was going out of the house i.e. fleeing away. For the first time in the complaint she alleged that these petitioners have kidnapped her son. The daughter of the complainant also stated that these petitioners were watching them.

She admitted that there is no dispute between the petitioners and the complainant. She also stated that the petitioners were willing to take her younger brother with them. Therefore, these are the only evidences against the petitioners. Now, therefore, except the statements made by the complainant that these petitioners have kidnapped the son of the complainant, there is nothing on record.

7. The Hon'ble Supreme Court in the case of **M.N. Ojha and others Vs. Alok Kumar Srivastav and another, (2009) 9 SCC 682** has held that the High Court cannot refuse to exercise its jurisdiction if the interest of justice so required where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no fair minded and informed observer can ever reach a just and proper conclusion as to the existence of sufficient grounds for proceeding. In such cases refusal to exercise the jurisdiction may equally result in injustice more particularly in cases where the complainant sets the criminal law in motion with a view to exert pressure and harass the persons arrayed as accused in the complaint. In the present case at our hand the allegation made by the complainant is against *bhaisur* and *devar*.

8. The learned counsel submitted that the petitioners are in government service and reside with their family and



children at Singrauli and Dhanbad and there was no occasion as to why they will kidnap the son of the complainant, who was residing in the tenanted premises at Patna. No reason has been assigned and only allegation is that the petitioners kidnapped her son. Therefore, only on this basis it cannot be said even a strong suspicion is there against the petitioners nor it is a case of circumstantial evidence. The witnesses examined under Section 202 Cr.P.C. in the year 2010 have given categorical date that on 15.01.1999 the son of the complainant was seen with the petitioners (vide the evidence of witness no.3, the neighbour). Can it be believed that a person, who has no relation with the parties, will remember the date and particular event, which occurred 12 years ago. The other witness i.e. so-called villager has also stated nothing except that he had heard that the son of the complainant was kidnapped by the petitioners.

9. In view of the above facts and circumstances of the case and the materials brought on record and in view of the settled propositions of law laid down by the Supreme Court, in my opinion, there is no material at all what to speak strong suspicion against the petitioners and, therefore, if the criminal proceeding is allowed to continue, it will not only harass the petitioners who are government employees but also occasion failure of justice and will

amount abuse of process of court.

10. In the result, this criminal miscellaneous application is allowed. The impugned order is set aside and the application for discharge filed by the petitioners is hereby allowed and the petitioners are discharged.

(Mungeshwar Sahoo, J)

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