

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.41556 of 2012

Arising Out of PS.Case No. -3520 Year- 2010 Thana -null District- PATNA

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1. Neeraj Kumar
2. Himanshu Shekhar
Both sons of Nanhak Singh
3. Nanhak Singh son of Late Rewal Singh
All residents of village- Kewai, Police Station- Khudaganj, District-
Nalanda

.... Petitioner/s

Versus

1. The State Of Bihar
2. Mithilesh Kuamr son of Late Baldeo Prasad, resident of village- Asharhi, P.O.-
Asharhi, P.S.- Hilsa, District- Nalanda, at present residing At Mohalla- Kanti
Factory Road, Gandhi Nagar, Near Budha Dental College, P.S.- Patrakar Nagar,
District- Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Chitranjan Sinha, Sr. Advocate
: Mr. Binoy Kumar, Advocate
For the Opposite Party/s : Mr. Hare Krishna Kumar, Advocate
: Mr. Rabindra Prasad Singh, Advocate
For the State : Mr. Tapeswar Sharma, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 27-04-2015

In the present application filed under section 482 of the
Code of Criminal Procedure (hereinafter referred to as “the Code”),
the petitioners seek quashing of the entire criminal proceedings
including the order dated 10.11.2011 passed in Complaint Case
No.3520C of 2010 by which the learned Judicial Magistrate, 1st Class,
Patna finding a prima facie case to be made out for the offences
punishable under sections 323, 341, 504 read with 34 and 379 of the

Indian Penal Code against the petitioners summoned them to face trial.

2. On 30th December 2010 opposite party no.2, namely, Mithilesh Kumar filed the aforesaid complaint against the petitioners before the learned Chief Judicial Magistrate, Patna alleging therein that on 13th March, 2009 petitioner no.3 Nanhak Singh executed an agreement to sell a piece of plot measuring 17 Kathas and 11 Dhurs situated at Mauza-Ranipur, Sub Registry Office- Patna City, Sadar Registry Office- Patna, District- Patna bearing Thana No.19, Tauzi No.1513, Khata No.377, Khesra No.4658 (Part) at the rate of Rs.90,000/- per Katha in favour of opposite party no.2. At the time of execution of the said agreement for sale, he received Rs. 50,100/- from the complainant and enquiry witness no.2 Ravi Shankar Singh. It has further been alleged that the other two accused, namely, Neeraj Kumar and Himanshu Shekhar in whose name the plot in question belongs are sons of aforementioned Nanhak Singh who had entered into an agreement on their behalf with the complainant. It has further been alleged that after execution of agreement for sale, the complainant approached the accused persons several times for measurement of land and execution of deed but the accused persons failed to execute the deed on one pretext or another. Finding no way out, the complainant sent a legal notice to the accused Nanhak Singh



on 2.4.2010. He also sent a reminder in this regard on 4th May, 2010. It has further been alleged that the accused persons along with their associates and anti social elements came at the residence of the complainant and they started abusing him. The accused Nanhak Singh is alleged to have caught collar of the complainant and with the help of others assaulted him. The accused Neeraj Kumar and Himanshu Shekhar along with others also assaulted him with fists and slaps as a result of which he fell down and, thereafter, the accused Neeraj Kumar took out Rs.2,500/- from his pocket and the accused Himanshu Shekhar snatched his wrist watch and golden chain. On *hulla*, several people of the locality assembled there and saved the life of the complainant. The complainant went to the Patrakar Nagar Police Station for institution of criminal case against the accused persons but the officer-in-charge refused to register the case. Hence, a complaint petition was filed in the Court on 30th October, 2010.

3. After institution of the complaint, the complainant was examined on oath. In his statement, he has stated that on 6th December, 2010 the other accused persons along with 2-3 others unknown came to his house and at that time his wife was also present there. According to him Nanhak Singh abused him and caught hold of his collar and took out Rs. 2,500/- from his pocket. He has further stated that two other accused, namely, Neeraj Kumar and Himanshu

Shekhar repeatedly slapped him. The accused Neeraj Kumar is also alleged to have snatched his wrist watch.

4. In course of inquiry under Section 202 of the Code, two witnesses, namely, Mithilesh Prasad and Ravi Shankar Singh were examined on behalf of the complainant. Enquiry witness no. 1 Mithilesh Kumar has stated in his deposition that the alleged occurrence of assault took place in between 11-12.00 a.m. on 06.12.2010. At the relevant time of occurrence he was at the residence of the complainant. According to him at the relevant time the accused Nanhak Singh and his son Neeraj Kumar came to the house of the complainant and when he refused to execute the deed it was the accused Neeraj Kumar who entered into a fight with the complainant.

5. I further find that the inquiry witness no. 2 Ravi Shankar Prasad has not stated a word in his statement in respect of any assault which took place at the house of the complainant. Apart from these two witnesses, no other witness was examined on behalf of the complainant in course of inquiry.

6. Learned counsel for the petitioners has contended that the complaint in question has been instituted with ulterior motive. He has stated that it is true that the complainant had entered into an agreement for sale with the petitioner no.3 Nanhak Singh in respect of

the land detailed hereinabove. On 13.3.2009 regarding sale of his sons' land and the period for execution of the sale deed was six months from the date of execution of agreement. The sons of the petitioner no.3 were not a party to the agreement nor were they present at Patna on 13.3.2009. The complainant never tried to get the sale deed executed during the prescribed period of agreement to sale in spite of several reminders given by petitioner no.3

7. He has further submitted that after lapse of more than one year, the complainant sent a legal notice under section 80 of the Civil Procedure Code to petitioner no.3 to which he immediately replied stating therein that within the time stipulated in the agreement the petitioner has not fulfilled the terms and conditions of the agreement and as such registration of land could not be executed.

8. Learned counsel for the petitioners has further contended that the complainant has not supported the allegations made in the complaint and the two enquiry witnesses also have not corroborated the complainant's version. They have contradicted each other in material particular.

9. On the other hand, learned counsel appearing for the complainant has submitted that the factum of receipt of advance money is not being denied by the complainant. So far as second part of allegation of assault etc. is concerned, has duly been corroborated

by the complainant in his examination on oath and in the statement of two witnesses produced in support of the complainant's version.

10. I have heard respective counsel for the parties and perused the record. I find substance in the argument of learned counsel for the petitioners.

11. I take note of the fact that the complainant has not given any date or time in respect of incident of assault made upon him in his house by the accused persons in the complaint petition. In the complaint petition he has stated that it was only his wife who was present inside the house when occurrence took place. Admittedly, his wife has not been made witness to the complaint for the reasons best known to the complainant. She has not been examined in course of inquiry before the learned Magistrate.

12. When the complainant was examined on oath, he has stated that the alleged incident took place on 6.12.2010 between 10-11 am. He has not stated a word before the court that either the witness Mithilesh Kumar or Ravi Shankar Singh who have been examined as E.Ws. 1 and 2 was present at that time of occurrence in his house though in the complaint petition it has been alleged that the accused Himanshu Shekhar had snatched his golden chain but while making his statement before the learned Magistrate, he has not uttered a word in that regard. In the complaint petition, he has stated that all the



accused assaulted him with fists and slaps badly and when he fell on ground the petitioner no.3 Nanhak Singh with the help of petitioner no.1 Neeraj Kumar took out Rs.2,500/- from his upper pocket but in his statement before the court he has not attributed any assault made upon him by the petitioner no.3 Nanhak Singh. He has not stated that the petitioner Neeraj Kumar assisted Nanhak Singh in any manner in snatching away Rs.2,500/- from his upper pocket. He has simply stated that the accused Neeraj Kumar and Himanshu Shekhar slapped him three to four times.

13. I further find that enquiry witness no.1 Mithilesh Kumar has stated before the Magistrate that the alleged occurrence took place between 11-12 a.m. on 6.12.2010. He has not stated a word regarding snatching of wrist watch, golden chain etc. from the person of the complainant. He has simply stated that it was accused Neeraj Kumar who entered into a fight with the complainant. I further find that enquiry witness no.2 Ravi Shankar Singh has not uttered a word regarding any assault made by any of the accused to the complainant.

14. Regard being had to the nature of evidence collected in course of inquiry, I am of the considered opinion that no prima facie case was made out against the petitioners for the offences punishable under sections 323, 341, 379 and 504 read with 34 of the Indian Penal Code. The complainant has not corroborated the allegations made in



the complaint petition. The version of the complainant has not been corroborated by the witnesses produced during enquiry. The person who is said to be present inside the house at the time of occurrence has not been made witness to the complaint. The witnesses who were not present at the time of incident have been made witness to the complaint petition. Moreover, they have either not supported the case of the complainant or given a contradictory statement to each other.

15. The allegations made in the complaint petition are vexatious in nature. The case on hand is a classic case of non-application of mind by the learned Magistrate. He did not scrutinize even the contents of the complaint and the materials collected in course of inquiry.

16. Not only this, the learned Magistrate failed to put any question to the complainant or the witnesses while conducting enquiry before summoning the accused persons. He truly was a silent spectator at the time of recording of preliminary evidence before summoning the petitioners.

17. Under the facts and circumstances of the case, I am of the opinion that the learned Magistrate ought to have dismissed the complaint in exercise of powers conferred under section 203 of the Code instead of summoning the accused under section 204 of the Code. I am also of the opinion that allowing the prosecution to

continue would be a gross misuse of the process of the court.

18. Accordingly, I allow this application and quash the entire criminal proceedings of Complaint Case No.3520C of 2010 including the order dated 10.11.2011 passed by the learned Judicial Magistrate, 1st Class, Patna.

(Ashwani Kumar Singh, J)

Md.S./-

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