

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.1876 of 2015

Arising Out of PS.Case No. -440 Year- 2009 Thana -PATNA COMPLAINT CASE District-
PATNA

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1. Manoj Kumar @ Manoj Kumar Choudhary son of Late Madan Lal Choudhary resident of Mohalla Gurhatta, Main Road, Patna City, P.S. Khajekalan, District Patna.

2. Sanjeev Kumar @ Mintoos son of Late Madan Lal Choudhary resident of Mohalla Gurhatta, Main Road, Patna City, P.S. Khajekalan, District Patna.

.... Petitioner/s

Versus

1. The State of Bihar.

2. Sanjay Kumar son of Sri Ramesh Prasad resident of Mohalla Gurhatta, Main Road, Patna City, P.O. Jhauganj, P.S. Khajekalan, District -Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rakesh Kumar Chandram, Adv.

For the Opposite Party/s : Mr. Tapeswar Sharma (App)

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA

ORAL ORDER

4 23-12-2016 Heard learned counsel for the petitioners, learned A.P.P.,

none appears on behalf of opposite party no. 2.

Petitioners sought by filing this petition to quash the order dated 05.07.2010 passed in Complaint Case No. 440(C)/2009 by which prima facie case under Sections 323/34 and 504 of the Indian Penal Code was found against the petitioners Manoj Kumar and Sanjeev Kumar.

The brief facts which are relevant for the disposal of this



case is that one Sanjay Kumar filed Complaint Case No. 440(C)/2009 and alleged that he owns a shop namely, Suraj Electric, Main Road, Gurhatta. Anoj Kumar usually supplying electrical goods to the complainant for the last six years. The complainant alleged that the petitioners and other accused persons are relative of Anoj Kumar. The complainant further alleged that some electrical goods were supplied. The complainant paid money to Anoj Kumar for supply of electrical goods, but Anoj Kumar did not supply the electrical goods. Anoj Kumar also issued cheque which was not honoured and for payment of money some altercation took place. Witnesses were examined. Thereafter, Sub-Divisional Judicial Magistrate, Patna City found prima facie case under Section 504, 323/34 of the Indian Penal Code and vide order dated 05.07.2010 the case proceeded against the petitioners.

Learned counsel for the petitioners submits that Anoj Kumar preferred Cr. Misc. 30122/2012 and vide order dated 12.12.2014, since Anoj Kumar had already paid the entire amount, the order dated 05.07.2010 finding prima facie case against Anoj Kumar was quashed.

It is submitted that from perusal of the complaint petition, it would appear that although the complainant named the petitioners, as brothers of Anoj Kumar, but the complainant had



not stated anywhere in the entire complaint petition that the petitioners either abused the complainant or assaulted him. Learned Sub-Divisional Judicial Magistrate, Patna City found prima facie case under Sections 323/34 and 504 of the Indian Penal Code which is palpably illegal as no material is available on record to make a case under Sections 323/34 and 504 of the Indian Penal Code against the petitioners. On perusal of the complaint petition, it appears that in para 12 of the complaint petition, the complainant alleged that on 17.05.2009 at about 6.00 p.m. he went to the house of accused no. 1 situated in Gurhatta Main Road, Patna City along with the complaint witness no. 1 and 2 and demanded his money, but the accused persons flatly refused to pay even a single farthing to the complainant and upon this hot exchange of words followed between the complainant and accused no. 1 and subsequently, accused no. 1 namely, Anoj Kumar abused the complainant and also assaulted the complainant with fists and slaps. The complainant has not whisper even a single word about abusing and assaulting the complainant against the petitioners.

Therefore, I find that the order finding prima facie case against the petitioners Manoj Kumar and Sanjeev Kumar under Section 323/34 and 504 of the Indian Penal Code is absolutely



illegal, as there is no such evidence on record. Accordingly, the order dated 05.07.2010 passed in Complaint Case No. 440(C)/2009 is quashed, so far as, the petitioners are concerned.

Accordingly, this quashing petition is allowed.

(Prabhat Kumar Jha, J.)

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