

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No. 7722 of 2014

Arising Out of PS.Case No. -1472 Year- 2004 Thana -BHAGALPUR COMPLAINT CASE District- BHAGALPUR

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1. Md. Rashid Manzoor
 2. Md. Jawaid Manzoor
 3. Md. Shahid Manzoor
 4. Diamond Manzoor @ Md. Sharik Manzoor
- All sons of Late Manzoor Habib, Resident of Mohalla- Barahpura, Police Station- Ishakchak, District- Bhagalpur.

.... Petitioners

Versus

1. The State of Bihar
2. Masoom Habib S/O Late Abdul Habib, Resident of Mohalla- Barahpura, Police Station- Ishakchak, District- Bhagalpur.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Md. Najmul Hodda, Adv.
For the Opposite Party/s : Mr. B.N.Pandey, A.P.P.
Mr. Deepak Kumar Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL JUDGMENT
Date: 29-08-2016

Heard Mr. Md. Najmul Hodda, learned counsel for petitioners, Sri Brajendra Nath Pandey, learned Addl. Public Prosecutor as well as Sri Deepak Kumar Sinha, learned counsel, who on notice has appeared on behalf of complainant/opposite party no. 2.

2. Four petitioners have approached this Court invoking its inherent jurisdiction under Section 482 of the Code of Criminal Procedure, with a prayer to quash an order dated 06-01-2014 passed in Complaint Case No. C1472 of 2004 by the learned Sub Divisional Judicial Magistrate, Bhagalpur (hereinafter referred to as the

‘Magistrate’). By the said order, the learned Magistrate has rejected the petition filed under Section 245 of the Cr.P.C. on behalf of petitioners for their discharge.

3. Short fact of the case is that in the year 2004, a complaint was filed by the complainant/opposite party no. 2, who is close relative of petitioners, in which, it was alleged that on trivial issue, the accused persons entered into the courtyard of the complainant, abused him and also assaulted. It was further alleged that the accused persons had forcibly snatched Rs. 1,000/- (one thousand) from the complainant’s wife. After the complaint petition was filed, an enquiry was conducted and cognizance order was passed. After examination of three witnesses before charge, a petition was filed on behalf of petitioners for their discharge under Section 245 of the Cr.P.C. on the plea that to put pressure on petitioners in a civil case, the complaint was filed against the petitioners. It was claimed that one title suit, vide Title Suit No. 101 of 2004 was pending in between the parties. Besides this, an appeal in a proceeding under Section 107 of the Cr.P.C. was also pending. After filing of the discharge petition, the learned Railway Judicial Magistrate, Bhagalpur by its order dated 22-10-2009 (**Annexure - 8** to the supplementary affidavit filed on behalf of petitioners on 19th August, 2016) allowed the discharge petition. During the pendency of the proceeding, one of the co-accused namely Manjoor Habib, who was father of petitioners, died and as such,



the proceeding against him was directed to be dropped. After the petitioners were discharged, the complainant filed a revision, vide Criminal Revision No. 365 of 2009. The learned 1st Additional Sessions Judge, Bhagalpur by its order dated 13-12-2010 allowed the revision and quashed the order dated 22-10-2009, whereby petitioners were discharged. While allowing the revision, the learned Additional Sessions Judge had also issued certain directions.

4. Aggrieved with the order of the revisional court, petitioners approached this Court by filing an application under Section 482 of the Cr.P.C., vide Cr. Misc. No. 6122 of 2011 (**Annexure - 4** to the petition). The said application was finally disposed of by order dated 26-06-2012 passed by a Bench of this Court. This Court partly interfered with the order of the revisional court to the extent whereby certain directions were issued by the revisional court. While passing order, this Court remitted back the matter to the concerned Magistrate for passing order afresh under Section 245(1) of the Cr.P.C. Thereafter, the impugned order has been passed and the learned Magistrate by order dated 06-01-2014 has now rejected the discharge petition of the petitioners, which has been assailed in the present proceeding.

5. Learned counsel for petitioners, while assailing the impugned order, has argued that in a trivial issue, the petitioners, who are none else but own nephew of the complainant, have suffered a lot. The complaint case was filed in the year 2004 and till 2009, the



complainant had examined only three witnesses before charge. The witnesses were complainant himself and his own son and daughter, who are cousin of the petitioners. Since for a considerable time, no independent witness was brought on record before charge and there was family dispute, from petitioners' side, a petition was filed for discharge, which was entertained by the learned Judicial Magistrate, Bhagalpur and by a detailed reasoned order dated 22-10-2009, the learned Judicial Magistrate had allowed the discharge petition. However, the learned Additional Sessions Judge interfered with the order of discharge and finally, by order of this Court i.e. order dated 26-06-2012, the matter was remitted back to the learned Magistrate for passing order afresh. Again, though order of this Court was passed in the year 2012 on discharge petition, after delay of about one and half years, the present impugned order has been passed.

6. Learned counsel for petitioners submits that it is true that while rejecting the discharge petition, there is no requirement to assign detail reasons, but once in a situation, where earlier petitioners' discharge petition was allowed and finally, the matter was remitted back to the learned Magistrate by this Court, the learned Magistrate, at the time of passing order on discharge petition, was required to succinctly assign reason. By way of referring to the impugned order, learned counsel for petitioners submits that no plausible reason has been given by the learned Magistrate for rejecting the discharge

petition and as such, order impugned is liable to be set aside.

7. Besides challenging the order on technicality, learned counsel for petitioners has submitted that allowing the proceeding in such a trivial matter for such a long time will amount to allowing abuse of the process of the court and as such, this Court may exercise its inherent jurisdiction and set aside the impugned order.

8. Learned Addl. Public Prosecutor as well as Mr. Deepak Kumar Sinha, learned counsel for the complainant/opposite party no. 2 have opposed the prayer of petitioners. It was argued by Mr. Sinha, learned counsel for the opposite party no. 2 that after the matter was remitted back by this Court, the learned Magistrate examined the matter afresh, particularly the fact that three witnesses, who were examined before charge, had supported the case, has rightly rejected the discharge petition, which requires no interference.

9. Besides hearing learned counsel for the parties, I have also perused the materials available on record. It is not in dispute that petitioners are own nephew of complainant. It has also not been disputed that civil litigation was pending in between the parties. Moreover, in the complaint petition, it has been alleged that on trivial issue that is relating to switching on light, which had lighted the courtyard of the complainant, the alleged occurrence had taken place and thereafter, the complaint was filed. There is no serious accusation in the complaint petition. However, the Court is of the opinion that



while exercising jurisdiction under Section 482 of the Cr.P.C., this Court may not examine in detail regarding the accusation, but at the same time, if the Court is satisfied that by allowing a proceeding, abuse of process of law is going to be allowed, certainly in that event, it is necessary for this Court to exercise its inherent jurisdiction for stopping abuse of process of law.

10. In this case, complaint was filed in the year 2004. From the first order of discharge i.e. order dated 22-10-2009, it is evident that till the date of discharge, only three witnesses were examined in support of the complaint before charge and they were none else but complainant himself and his own son and daughter. The petitioners were discharged by the learned Judicial Magistrate by its order dated 22-10-2009, which was set aside by the revisional court and finally, the matter was remitted back by this Court by its order dated 26-06-2012 passed in Cr. Misc. No. 6122 of 2011. It is true that while rejecting a petition for discharge, there is no statutory provision to assign detail reason and reason is required to be assigned only in a case where the learned Magistrate proposes to discharge an accused, but once in this case, matter was remitted back to the learned Magistrate by the order of this Court and in a situation where earlier petitioners were discharged by the learned Judicial Magistrate, while passing order on remand, it was mandatorily required for the learned Magistrate to assign reasons succinctly in rejecting the discharge petition. On going

through the impugned order, the Court is satisfied that in a mechanical manner, the order was passed.

11. Accordingly, in view of facts and circumstances, particularly the fact that complaint was filed long back in the year 2004 and even after remand, no specific order was passed, while rejecting the discharge petition, the order impugned is liable to be set aside.

12. Accordingly, the order dated 06-01-2014 passed in Complaint Case No. C1472 of 2004 by the learned Sub Divisional Judicial Magistrate, Bhagalpur is hereby set aside and petitioners are discharged from the criminal proceeding.

13. The petition stands allowed.

(Rakesh Kumar, J.)

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