

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.1323 of 2015

Arising Out of COMPALINT CASE No. -384 C Year- 2011 District- KHAGARIA

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1. Binod Prasad Singh @ Binod Singh S/o Sri Tara Prasad Singh, resident of Village & P.O.- Dharhi, P.S.- Beldaur, District- Khagaria
 2. Kumar Navin Chandra @ Navin Singh S/O- Sri Hari Prasad Singh, resident of Village AND P.O.- Dharhi, P.S.- Beldaur, District- Khagaria

.... Petitioners

Versus

1. The State of Bihar
2. Md. Usman, S/O Late Abdul Mian, resident of Village AND P.O.- Dharhi, P.S.- Beldaur, District- Khagaria

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Harendra Kumar Tiwary, Advocate
For the Opp. No. 2	:	Mr. Mrityunjay Kumar, Advocate
		Mr. Arun Kumar Tiwary, Advocate
For the State	:	Mr. Rajendra Singh Shastri, APP.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 21-06-2016

Heard Mr. Harendra Kumar Tiwary, learned counsel for the petitioners, Mr. Arun Kumar Tiwary, learned counsel duly assisted by Mr. Mritunjay Kumar, Advocate on Record and Mr. Rajendra Singh Shastri, learned Additional Public Prosecutor for the State.

2. By way of the present application preferred under Section 482 of the Code of Criminal Procedure, 1973 (for



short “CrPC”), the petitioners seek quashing of the order dated 12.11.2014 passed by the learned Additional Sessions Judge, II, Khagaria in Cr. Revision No. 76 of 2013, whereby and whereunder the revisional court has set aside the order dated 26.08.2013 passed by the learned Magistrate in exercise of power conferred under Section 203 of the CrPC in Complaint Case No. 384 C of 2011.

3. The petitioners were named in the Complaint Case No. 384 C of 2011 as accused along with six others. The aforesaid complaint was filed by opposite party no. 2 Md. Usman on 16th May, 2011 for an occurrence which took place on 13.05.2011 at about 2 p.m. It is alleged in the complaint that when the complainant was present on his field, the accused persons being variously armed with pistol came to his field and upon order of accused no. 8 Sudhir Singh, the Officer-in-Charge of Beldaur Police Station, Khagaria, they started harvesting the wheat and maize crop on the field. It is also alleged that accused no. 1 to 5, namely, Sonu Singh, Sunil Singh, Kishore Singh, Binod Singh and Navin Singh tied his hands and thrashed him on the ground. They harvested 200 maund of wheat crop and 50 mound of maize crop standing over 7 Bigahas of land of the complainant as detailed in the complaint petition and they loaded the harvested crop on a tractor and went away. It is further alleged in the complaint that

after the accused persons left the place, the witnesses present at the place of occurrence untied the hands of the complainant. In the complaint petition, one Maheshwar Yadav and one Manohar Muni were named as witnesses to the occurrence.

4. The complainant was examined on oath and apart from the complainant in course of inquiry only one witness, namely, Maheshwar Yadav was examined under Section 202 of the CrPC. In his statement on oath, the complainant has stated that on the relevant date and time of occurrence, when he was present on his field, the accused Sonu Singh came there and started abusing and thereafter, accused Sonu Singh, Sunil Singh, Kishore, Binod and Sri Ranbindra Singh tied his hands and thrashed him on the ground. They also assaulted him with fists and slaps and looted the standing wheat and maize crops from his field. He has categorically stated that apart from what has been stated above nothing else had happened on the date of occurrence.

5. The only inquiry witness, namely, Maheshwar Yadav, who was examined under Section 202 of the CrPC, has stated that on the relevant date and time of occurrence it was accused Sudhir Singh who had ordered to harvest the standing crops, pursuant to which accused Phool Singh, Sonu Singh, Navin Singh, Binod Singh, Jivo Singh, Sunil Singh and Kishore Singh

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He has stated that apart from the aforesaid accused persons, there were 100-150 unknown persons who had looted the complainant's standing wheat and maize crops from his field. He has further alleged that the accused persons took away the crops on a truck from the place of occurrence.

6. Considering the discrepancies in the evidence of the witnesses examined during inquiry, learned Jurisdictional Magistrate dismissed the complaint vide order dated 26.08.2013 as contained in annexure-3 to the present application in exercise of power conferred under Section 203 of the CrPC. The said order dated 26.08.2013 was challenged by the complainant before the revisional court vide Cr. Revision No. 76 of 2013. After hearing the parties, the revisional Court has set aside the order of the learned Magistrate mainly on the ground that the learned Magistrate had not discussed in his order regarding the discrepancies in the evidence of the witnesses examined during inquiry vide impugned order dated 12.11.2014.

7. Mr. Harendra Kumar Tiwary, learned counsel for the petitioners has drawn my attention towards the statements of the complainant made on oath and the evidence of the inquiry witness no. 1 Maheshwar Yadav. He has pointed out that material

allegations made in the complaint have not been supported by the complainant while being examined on oath and the statement of the complainant is further contradicted in material particular by the sole witness examined under Section 202 of the CrPC.

8. On the other hand, Mr. Arun Kumar Tiwary, learned counsel for opposite party no. 2 has submitted that there is no error in the order passed by the revisional court and in view of the fact that no proper reason was assigned by the learned Magistrate while dismissing the complaint in exercise of power conferred under Section 203 CrPC, the revisional Court has rightly set aside the order passed by the learned Magistrate. He has further contended that the complainant has fully supported the allegations made in the complaint during examination on oath and his statement has duly been corroborated by the inquiry witness no. 1 Maheshwar Yadav.

9. Mr. Rajendra Singh Shastri, learned Additional Public Prosecutor for the State has submitted that the points taken by the petitioners can only be considered at the appropriate stage of trial and not at the stage of taking cognizance of the offences. He has submitted that in view of the allegations made in the complaint and the statement of the complainant recorded under Section 200 of the CrPC and the statement of inquiry witness no. 1 recorded under

Section 202 of the CrPC, a *prima facie* case to summon the accused persons under Sections 147, 148, 149, 323, 441 and 379 of the Indian Penal Code is made out.

10. Having heard learned counsel for the parties and perused the record, I find substance in the arguments made by the learned counsel for the petitioners. He has rightly submitted that the material facts alleged in the complaint have not been supported. I find that there is no allegation in the complaint that any one abused the complainant but while being examined on solemn affirmation the complainant has stated that it was accused Sonu Singh who started abusing him first. Further in the complaint petition altogether eight persons, including the petitioners have been made accused but while being examined on oath the complainant has not whispered a single word against accused no. 6 to 8, namely, Fool Singh, Om Prakash Singh and Sudhir Singh, the Officer-in-Charge of Beldaur Police Station. Furthermore, in the complaint it has been alleged that looted crops were loaded on a tractor and taken away by the accused persons but the complainant has not stated anything in this regard while being examined on oath. I further notice that though it is alleged in the complaint that the witnesses present at the place of occurrence untied the hands of the complainant after the accused had left the place of occurrence, there is no such

evidence in the statement of the complainant made on oath.

11. Apart from the discrepancies in the evidence of the complainant as noted above, I further find that the inquiry witness no. 1 Maheshwar Yadav has tried to improve the case in his deposition by stating that about 100-150 labourers also accompanied the accused persons in harvesting the standing crops. There is no such allegation in the complaint. It is absolutely a new story being created by a witness examined in course of inquiry. Another glaring aspect of the matter is that in the complaint petition it is stated that looted crops were loaded and transported by the accused persons on a tractor but the inquiry witness no. 1 Maheshwar Yadav has stated that the accused persons took away the looted crops on a truck.

12. In my opinion, the discrepancies noted above were sufficient for the Magistrate to disbelieve the complainant's case and dismiss the complaint in exercise of power conferred under Section 203 of the CrPC. In my considered opinion, the revisional court has failed to appreciate the aforesaid discrepancies in the case of the complainant and has erroneously set aside the order passed by the Magistrate.

13. In that view of the matter, the impugned order dated 12.11.2014 passed by learned Additional Sessions Judge, II,

Khagaria in Cr. Revision No. 76 of 2013 is set aside and quashed.
Accordingly, the application is allowed.

(Ashwani Kumar Singh, J.)

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