

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.1825 of 2014

Arising Out of PS.Case No. -842 Year- 2012 Thana -EAST CHAMPARAN COMPLAINT District- EASTCHAMPARAN(MOTIHARI)

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1. Rajendra Rai S/O Late Bucha Rai @ Kucha Rai Resident Of Village Bairiya, P.S. Kesariya, District East Champaran
 2. Bhaju Rai @ Bhanu Rai Son Of Late Bucha Rai @ Kucha Rai Resident Of Village Bairiya, P.S. Kesariya, District East Champaran
 3. Ranjit Rai Son Of Lochan Rai Resident Of Village Bairiya, P.S. Kesariya, District East Champaran
 4. Mangar Rai Son Of Mahesh Rai Resident Of Village Bairiya, P.S. Kesariya, District East Champaran
 5. Manjit Rai Son Of Lochan Rai Resident Of Village Bairiya, P.S. Kesariya, District East Champaran

.... Petitioner/s

Versus

1. The State Of Bihar
2. Ganesh Rai Son Of Late Banaras Rai Resident Of Village Bairiya, P.S. Kesariya, District East Champaran

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Anil Kumar, Advocate
For the Opposite Party/s : Mr. B.Ram(App)

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL ORDER

5 16-11-2016 Heard learned counsel for the petitioners, learned counsel appearing on behalf of the Opposite Party no. 2 and learned A.P.P. for the State.

The present application has been filed for quashing of the order dated 29.08.2013 passed by the learned Judicial Magistrate, Motihari, in Trial No. 5007 of 2013 arising out of Enquiry Case No. 842 of 2013, whereby the processes were directed to be issued after cognizance being taken for the offences

punishable under Sections 379 and 504/34 of the Indian Penal Code.

The allegation of the complainant is that after withdrawal of Rs. 10,000/- from his Account No. 32170902971 from S.B.I. Branch, while he was coming with cash of Rs. 5000/- as Rs. 5000/- was spent towards purchase of certain articles, the petitioners snatched the said amount and articles on pistol point and the complainant and his wife were abused and his wife was also assaulted on her abdomen, as a result her pregnancy got terminated.

It has been submitted by the learned counsel for the petitioners that the statement of the bank account of the complainant does not reflect that Rs. 10,000/- was withdrawn and that the petitioners and complainant are agnates.

Learned counsel appearing on behalf of the Opposite Party No. 2 submits that Bank account, annexed as Annexure-3 reflects transactions from 15.04.2013 which can not be stated to be a complete statement of the Bank account of alleged date of occurrence i.e. 04.04.2013.

Since both the parties are agnates and the order of cognizance and processes issued thereto also does not specify whether the amount was withdrawn on the alleged date of

occurrence, although, the complainant/Opposite Party No. 2 was examined under Section 200 of the Cr.P.C. on oath and so also witnesses under Section 202 of Cr.P.C., but the order dated 29.08.2013 does not specify whether the amount was withdrawn on the alleged date of occurrence.

In that view of the matter, the order impugned cannot be sustained. Accordingly, the order dated 29.08.2013 passed by the Judicial Magistrate, Motihari in Trial No. 5007 of 2013 arising out of Inquiry Case No. 842 of 2013 is set aside. The matter is remanded back before the Jurisdictional Magistrate for passing appropriate order in accordance with law after taking into consideration the materials available on record and also after examining the bank passbook of the complainant.

With the aforesaid observations and directions the application stands disposed of.

(Nilu Agrawal, J)

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