

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.27829 of 2014

Arising Out of PS.Case No. -59 Year- 2012 Thana -VAISALI COMPLAINT CASE District-
VAISHALI(HAJIPUR)

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Kumar Patel, Son of Tripurari Saran Singh, Ex B.D.O. Vaishali Block, P.S. -
Vaishali, District – Vaishali, at present Resident of Mohalla - Sri Krishna Nagar,
Road No. - 22, P.S. - Buddha Colony, District - Patna. Petitioner.

Versus

1. The State of Bihar
 2. Virendra Paswan Son of Raghuveer Paswan Resident of Village - Majhauri,
P.S. - Vaishali, District - Vaishali. Opposite Parties.
- =====

Appearance :

For the Petitioner/s : Mr. Rajeev Ranjan No.II, Adv.

For the Opposite Party/s : Mrs. Sangita Sharma, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL**

ORAL JUDGMENT

Date: 05-07-2017

Heard learned counsel for the petitioner and learned
A.P.P. for the State.

2. This application under Section 482 of the Code of
Criminal Procedure has been preferred against the order dated
18.04.2013, passed in Complaint Case No.C1-59/12
corresponding Tr. No.5797/13, by the learned J.M. 1st Class,
Vaishali at Hajipur, whereby finding a *prima facie* case against
the petitioner, the learned Magistrate has taken cognizance
against the petitioner under Sections 341, 323, 379, 504/34 of the



Indian Penal Code and ordered for issuance of summon against the petitioner.

3. The prosecution case, in nutshell, is that the complainant-opposite party no.2, Virendra Paswan filed a complaint with allegation that being a member of the B.P.L. family a sum of Rs.45,000.00 was sanctioned in favour of his wife for the construction of house under the Indira Awas Yojana and Rs.30,000.00 was credited in her bank account standing in the Central Bank of India, Madarana Branch. When his wife went to withdraw the money, the bank officer refused to pay her money claiming that the B.D.O. has prohibited from withdrawing the money. It is also alleged that on the date of occurrence when the complainant was regressing to his house from market accused persons intercepted him and demanded bribe to release the money. On refusal to pay, they surrounded him and snatched his Mufalar and dashed him. They also slated him in the name of caste. It has further been alleged that he has applied for rectification of name of his father in the block office at Vaishali. In buttress of his case, the complainant examined himself on solemn affirmation and his three witnesses.

4. On perusing the complaint petition and material available on record, the learned Magistrate appears to have ordered to issue summon against the petitioner finding a *prima*



facie case against accused persons under Sections 341, 323, 379, 504/34 of the Indian Penal Code.

5. It has been submitted by learned counsel for the petitioner that the complainant has also applied for Indira Awas Yojana, but two persons of the same family cannot avail the said scheme. It has been further submitted by learned counsel for the petitioner that there is no case of assault against the petitioner, hence Section 323 of the Indian Penal Code is not made out against him. He has filed an agreement entered into by the opposite party no.2 regarding the Indira Awas awarded in his favour.

6. So far as argument of learned counsel for the petitioner is concerned, that if two persons of the same family cannot avail the benefit of Indira Awas Yojana and if the opposite party no.2 has availed the said benefit in spite of availing it in the name of his wife, the same may be cancelled. For application of Section 323 of the Indian Penal Code making assault on the victim is not necessary. If any sort of violence or force is applied against the victim causing hurt to him, in my considered opinion, Section 323 IPC is made out. As the petitioner has been indicted inter alia with dashing the informant, that is sufficient to cause hurt to the informant and case under Section 323 IPC is made out against the petitioner. The learned Magistrate appears to have



rightly taken cognizance under Sections 341, 323, 379, 504/34 of the Indian Penal Code finding prima facie case, on the basis of material available on record.

7. In the facts and circumstances of the case, I do not find any substance in the application. Accordingly, this application is dismissed. However, the learned Court below is directed to dispose of the discharge petition of the petitioner if filed by him in accordance with law without being prejudiced by order of this Court.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.07.2017
Transmission Date	07.07.2017

