

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.12669 of 2015

Arising Out of PS.Case No. -2499 Year- 2008 Thana -PURNIA COMPLAINT CASE District-
PURNIA

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1. Bimal Singh @ Bimal Kumar Singh Son of Sri Saryoog Prasad Singh,
 2. Pankaj Singh @ Pankaj Kumar Singh @ Bablu Singh, Son of Sri Saryoog Prasad Singh,
 3. Saryoog Prasad Singh, Son of Late Satya Devi Singh
 4. Indu Devi, Wife of Sri Bimal Singh @ Bimal Kumar Singh,
 5. Chintu Singh, S/o Sri Nirmal Singh,
 6. Jeevan Singh, S/o Sri Moti Singh, All Resident of Mohalla - Shastri Nagar, Kal Bhawan Road, Badhubani, P.S. - K. Hat, District - Purnea.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Madhu devi, Wife of Sri Shambhu Mishra, Resident of Mohalla - Shashtri Nagar, Kala Bhawan Road, Madhubani, P.S. K. Hat, District - Purnea.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bijendra Kumar Singh
For the Opposite Party/s : Mr. Iftekhar Mahmood(App)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 08-05-2017 Heard Mr. Vikram Deo Singh, learned counsel
for the petitioner and Mr. Iftekhar Mahmood, learned A.P.P. for
the State.

The present application has been filed for
quashing the order dated 03.06.2013 passed by learned Judicial
Magistrate, 1st Class, Purnea in Complaint Case No. 2499 of 2008,
whereby cognizance has been taken with regard to petitioner No. 1
namely Bimal Singh @ Bimal Kumar for the offences punishable
under Sections 323, 354, 448, 325 of the Indian Penal Code, with



regard to petitioner No. 2 namely Pankaj Singh @ Bablu Singh under Sections 323, 354, 448, 325 and 379 of the Indian Penal Code, with regard to petitioner No. 3 namely Saryug Prasad Singh, under Section 323 of the Indian Penal Code, with regard to petitioner No. 4 namely Indu Devi under Sections 323 and 325 of the Indian Penal Code and with regard to petitioner No. 6 namely Jeevan Singh under Section 323 of the Indian Penal Code.

The prosecution case is that petitioners are residing in front of house of the complainant intervened by a Municipal road. The accused persons used to drain out waste water towards the courtyard of the complainant causing inconvenience to the complainant. The complainant tried to stop the flow of the drain water whereupon the petitioners entered into the house and assaulted the complainant with fists and slaps. The petitioner No. 1 is alleged to have assaulted with iron rod and snatched gold chain of the complainant.

Learned Judicial Magistrate, 1st Class, Purnea, after examining the complainant on S.A. and the enquiry witnesses found prima facie case against the petitioners and accordingly issuance of process was issued vide order dated 03.06.2013.

It is submitted by learned counsel for the petitioner that accusation has been levelled in the background of



dispute with regard to the flow of drain water. There is counter version of the occurrence also and mechanically learned Magistrate has passed order of cognizance in a speed up manner.

In view of this Court, at the stage of exercising jurisdiction under Section 190(1)(b) of the Code of Criminal Procedure, the court has to only see prima facie case while taking cognizance. The impugned order suggests that after considering the accusation made in the complaint, the S.A. of the complainant and the statement of the enquiry witnesses, the impugned order has been passed. The useful reference may have been given as has been held by the Apex Court in the case of **Sonu Gupta Vs. Deepak Gupta & Ors.** reported in **2015(2) PLJR (S.C.) 321** , relevant portion whereof reads as follows:-

"7. Having considered the details of allegations made in the complaint petition, the statement of the complainant on solemn affirmation as well as materials on which the appellant placed reliance which were called for by the learned Magistrate, the learned Magistrate, in our considered opinion, committed no error in summoning the accused persons. At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence, or, in other words, to find out whether prima facie case has been made out for summoning the accused persons. At this stage, the learned



Magistrate is not required to consider the defence version or materials or arguments nor he is required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not.

8. It is also well settled that cognizance is taken of the offence and not the offender. Hence at the stage of framing of charge an individual accused may seek discharge if he or she can show that the materials are absolutely insufficient for framing of the charge against that particular accused. But such exercise is required only at a later stage, as indicated above and not at the stage of taking cognizance and summoning the accused on the basis of prima facie case. Even at the stage of framing of charge, the sufficiency of materials for the purpose of conviction is not the requirement and a prayer for discharge can be allowed only if the court finds that the materials are wholly insufficient for the purpose of trial. It is also a settled proposition of law that even when there are materials raising strong suspicion against an accused, the court will be justified in rejecting a prayer for discharge and in granting an opportunity to the prosecution to bring on record the entire evidence in accordance with law so that case of both the sides may be considered appropriately on conclusion of trial."

The impugned order has been passed on 03.06.2013 and there is nothing on record to suggest the present



stage of the case.

Accordingly, the application is disposed of with liberty to the petitioners to raise all the contentions at the stage of framing of charge, if the charge has already not been framed in the matter.

Shageer/-

(Dinesh Kumar Singh, J)

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