

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.27328 of 2014

Arising Out of PS.Case No. -246 Year- 2013 Thana -PATNA COMPLAINT CASE District-
PATNA

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Sandhya Gupta, W/o Binay Gupta, Resident of Mohalla, Hussainabad, Durga
Asthan, Police Station – Mojahidpur, District-Bhagalpur.

.... Petitioner/s

Versus

1. State of Bihar.
2. Mohan Deo, Son of Late Kant Lal, permanent resident of Mohalla-Anand Marg Colony, Police Station-Jagdishpur, District-Bhagalpur, at present resident of quarter no. 134 Loco Colony Khagaul, Police Station Khagaul, District-Patna.

.... Opposite Party/s

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Appearance:

For the Petitioner/s : Mr. Dr. Manoj Kumar, Advocate.

For the Opposite Party/s : Mr. Abhay Kumar Roy, APP.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA

JAISWAL

ORAL JUDGMENT

Date: 26-07-2017

Heard learned counsel for the petitioner, learned
counsel for opposite party no.2 and learned APP for the State.

2. This application under Section 482 of the Code of
Criminal Procedure has been filed for quashing the order dated
14.02.2014 passed by learned Judicial Magistrate, Danapur in
Complaint Case No. 246 of 2013, whereby the learned Magistrate
finding prima facie case against the petitioner and others under
Sections 323 and 504 of the Indian Penal Code has ordered to issue
summon against them.

3. It is submitted by learned counsel for the petitioner



that the petitioner happens to be a lady and it is quite impossible that being a lady she will arrive at the place of occurrence armed with country made pistol and assault the complainant and his wife by extending threatening of dire consequences. There is a quite contradiction between the solemn affirmation of the complainant and the testimony of the witnesses. There is a property dispute between the parties. Hence, no prima facie case under Sections 323 and 504 of the Indian Penal Code is made out against the petitioner.

4. Learned APP and learned counsel for the opposite party no.2 vehemently opposed the aforesaid submission of the learned counsel for the petitioner.

5. From perusal of the record, it appears that the complaint petition was filed by the complainant against the petitioner and other named and one unknown miscreant with the allegation in succinct that at the time of selling out of 35 decimal of land by the complainant, accused persons had demanded extortion of Rs. 1 lakh and extended threatening of dire consequences. On the date of occurrence, while the complainant along with his wife was at his house, all the accused persons named in the complaint petition armed with country made pistol and deadly weapons entered into his house and assaulted him. The petitioner along with three others pointed pistol on them and extended threatening of dire consequences in case



of non-executing of the said land in their favour. The petitioner also extended threatening of dire consequences on the way to his house. They also tried to eliminate him by tying his neck and twisted hand of his wife.

6. During the course of enquiry, the complainant examined himself on solemn affirmation and also examined his three witnesses in buttress of his case. On perusing the complaint petition, solemn affirmation of the complainant and deposition of the witnesses, the learned Judicial Magistrate finding prima facie case against the petitioner and others under Sections 323 and 504 of Indian Penal Code took cognizance of the offence against the five accused persons including the petitioner.

7. From perusal of the solemn affirmation of the complainant, it appears that complainant has specifically stated that the petitioner twisted the hand of his wife besides extending threatening of dire consequences of eliminating them. Likewise, witness no.1 has also explicitly stated that the petitioner twisted her hand besides extending threatening of dire consequences. Thus, prima facie case under Sections 323 and 506 of the Indian Penal Code is made out against the petitioner, but learned Magistrate appears to have taken cognizance under wrong Section 504 I.P.C. instead of Section 506 I.P.C regarding extending threatening besides



Section 323 I.P.C.

8. Though learned counsel for the petitioner submitted that there is a quite contradiction between the solemn affirmation of the complainant and statement of the witnesses, but the said submission is not worth consideration at the time of taking cognizance, as at the time of taking cognizance, Magistrate is not required to examine the evidence meticulously and pros and cons of the case as is required to hold conviction during trial. He is only required to consider the prima facie case.

9. In the facts and circumstances of the case, I do not find any merit in the petition. Accordingly, this quashing petition is dismissed with aforesaid modification in the impugned order.

(Prakash Chandra Jaiswal, J)

Mishra/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	02.08.2017
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