

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.17412 of 2012

Arising Out of PS.Case No. -0 Year- null Thana -null District- KATIHAR

- =====
1. Saroj Devi Agrawal @ Saroj Devi, w/o Bajendra Kumar Agrawal
 2. Rajendra Kumar Agrawal, s/o late Mahesh Prasad Agrawal
 3. Shubham @ Shubham Agrawal, s/o Rajendra Agrawal
- All r/o Mohalla-Bara Bazar, P.S.-Town, Distt-Katihar

.... Petitioner/s

Versus

1. The State of Bihar
2. Most. Renu Agrawal, wife of late Mahesh Prasad Agrawal, r/o Mohalla M.G. Road, P.S.-Town, Distt. Katihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. R. Ambastha, Advocate.
Mr. R.P. Sah, Advocate.
For the opposite party No. 2 : Mr. Anant Kumar, A.P.P.
For the State : Mr. Ramesh Kumar Agrawal, Advocate.
Mr. Anupa Nand Jha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 17-07-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 30.1.2012 passed by the learned Chief Judicial Magistrate, Katihar, in Complaint Case No. 199 of 2011, Trial No. 2790 of 2012 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioners and three other accused persons for the offences under Sections 323 and 379/34 of the Indian Penal Code.

2. Heard learned counsel for the petitioners, learned counsel for the opposite party No. 2 and learned counsel for the State.

3. The counsel for the opposite party No.2 has given



the list of five Criminal cases which have been filed by the petitioner No. 2 against the complainant. He has submitted that petitioner No. 2 is elder brother of the deceased husband of the complainant. The complainant became widow in the year 2000. She is living in the house in question. Petitioner No. 2 wants the complainant to oust her from the house on the basis of deed of gift alleged to have been executed by the mother in his favour on 15.12.1999. He has further submitted that a Title Suit is pending between the parties with respect to the aforesaid gift vide Title Suit No. 40 of 2000.

4. The counsel for the petitioner has submitted that the aforesaid suit has been decreed in favour of the petitioner No. 2 vide judgment dated 22.7.2016. The counsel for the opposite party No. 2 has submitted that the appeal is pending against the aforesaid judgment.

5. The counsel for the petitioner has further submitted that the instant case has been filed by the complainant with *mala fide* on account of aforesaid civil dispute pending between the parties.

6. From the allegation in the complaint petition it appears that there is specific allegation against the accused persons of committing assault, abusing the complainant and assaulting her along with her two sons on 24.1.2011 and 25.1.2011 and also committing theft from the shop and taking away Rs.5,000/- from possession of



elder son of the complainant Rahul Agrawal..

7. There is specific allegation in paragraphs 8, 9 and 10 of the complaint petition that on 24.1.2011 the petitioner No. 2 and his son (Petitioner No. 3) started pressing neck of younger son of the Complainant Rohit Agarwal on account of which he became unconscious. The complainant took her son to Katihar Hospital. It is further alleged that on 25.1.2011, the petitioner No. 2 along with two unknown persons assaulted the elder son of the complainant Rahul Agrawal while he was returning from Vegetable market and took out Rs.300/- from his pocket.

8. The court below has after holding enquiry found prima facie case against the petitioners for the offence under Sections 323 and 379/34 of the Indian Penal Code.

9. It has been submitted on behalf of the petitioner that there is no specific allegation against the petitioner No. 1. The counsel for the opposite party No. 2 has submitted that there is specific allegation in paragraph-8 that the petitioner No. 1 along with petitioner No.3 abused the complainant and also gave threat to get both the sons of the complainant murdered.

10. From the impugned order, it appears that learned Magistrate has after holding enquiry, found prima facie case against the petitioners on the basis of Solemn Affirmation of the complainant and statement of other three witnesses recorded during enquiry. The



Xerox copy of Solemn Affirmation of the complainant and statement of three witnesses are available on the record. All the witnesses have supported the case in their statement during enquiry under Section 202 Cr. P.C.

11. The learned Magistrate is only required to see whether prima facie case is made out or not on the basis of allegation made in the complaint and statement of witnesses recorded during enquiry including Solemn Affirmation of the complainant.

12. Therefore, this Court does not find any illegality in the impugned order.

13. This Cr. Miscellaneous application is accordingly dismissed.

14. The petitioner is given liberty to raise all the points as raised in this petition before the court below at the time of framing of charge which shall be disposed off by the court below in accordance with law without being prejudiced by this order.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	27/07/2017
Transmission Date	27/07/2017

