

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.47506 of 2013

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1. Udyanand Jha Son Of Late Kulanand Jha Resident Of Village- Shyampur, Post- Kumatha, P.S.- Bath (Asarganj), District- Bhagalpur
 2. Niresh Jha Son Of Sri Udyanand Jha Resident Of Village- Shyampur, Post- Kumatha, P.S.- Bath (Asarganj), District- Bhagalpur

.... Petitioners

Versus

1. The State Of Bihar
2. Kanan Kusum Jha Wife Of Sri Dharmendra Jha Resident Of South Mandiri, P.S.- Budha Colony, District- Patna

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Rajendra Kumar Jain, Advocate.

For the Opposite Parties : Mr. Sunil Kr.Pandey (APP)

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL ORDER

7 09-05-2017 Supplementary affidavit has been filed on behalf of the petitioners. Let it be kept on the record.

This Criminal Miscellaneous has been filed for quashing the order dated 06.04.2011 passed by Sri Rajeev Kumar, the then Judicial Magistrate, 1st Class, Patna in Complaint Case No. 2322 C of 2010, whereby and whereunder, prima-facie case has been found against the petitioners also along with other accused under sections 379, 323 and 506/34 of the I.P.C as well as for quashing the entire further proceeding relating to these two accused persons of this case which is at present pending in the court of Sri Ashutosh Khetan, J.M. 1st Class, Patna.

Heard the learned counsel for the petitioners, the



learned A.P.P. for the State and the learned counsel for the Complainant.

As per the complaint petition, on the eve of marriage of the complainant's son Saraswati Devi came in the house of the complainant on 11.06.2010 and stayed in the house of the complainant on the plea of treatment at Patna. In the night of 14th August, 2010 when the complainant with his family had gone to her native village and the elder son of the complainant, namely, Parag Jha was alone in the house along with the daughter of Viveka Nand Jha the accused no.1 committed theft in the house of the complainant by breaking the lock of the Box and took away one gold necklace set, one gold chain, one set gold earring and cash amount of Rs. 12000/- and also cash of Rs. 5,000/- and left the house of the complainant with his brother who had arrived in the house of the complainant in the morning of 14.08.2010 from Bhagalpur and proceeded with her sister in the morning of 15.08.2010 for his home. In the morning of 15.08.2010 at 6 A.M. when the son of the complainant woke up the accused Saraswati Devi and his brother Pappu Jha were not present in the house and the door was found opened. When the complainant and her husband requested to the father and mother of accused no.1 through mobile to interfere in the matter and to return the



ornaments and cash amount of theft otherwise to file criminal case then they started talking in hot words. In the night of 17.08.2010 at about 9.15 P.M. Veena Devi, Pappu Jha, Devanand Jha, Pritam Nand Jha, Naresh Jha and Udyanand Jha along with three unknown persons came in the house of the complainant and started hot talking with the husband of the complainant. At the relevant time the complainant was making food in the kitchen and the witness no.1 was present in the house with his daughter. In spite of intervention of witness no.1, namely, Viveka Nand Jha settlement could not be done. When the complainant came in the room from kitchen with the tea pot and water glasses to welcome the accused persons Veena Devi pushed back the complainant with force resulting the complainant fell down on the earth and the tea pot, tea cups and the plates were broken. The complainant received injury in her back side of the body and when the said act was objected by her husband and witness no.1 the matter had become much critical. Thereafter the husband of the complainant directed them to leave the house. All of a sudden, Pappu Jha and Udyanand Jha took out pistols upon Dharmendra Jha and Vivekanand Jha and all the accused persons threatened the complainant, her husband and witness no.1 Vivekanand Jha that if any case will be lodged they will put their life in danger. The



unknown persons also gave threats. The husband of the complainant and witness no.1 had gone to the Budha Colony Police Station in the night of 17.08.2010 but the police refused to register the FIR, hence the complaint case.

The complainant was examined on the solemn affirmation and the two enquiry witnesses were also examined. Purchase slip from the Jeweler in connection with the ornaments has also been filed and the learned Magistrate after considering all these materials passed the impugned order against the petitioners also.

On behalf of the petitioners it is submitted that the petitioners were not present at the time of occurrence. No offence under section 379 of the I.P.C. is made out against them. As alleged, they have not committed theft of ornaments. Moreover, in the statement of the complainant nothing has come against the petitioners. Further, two witnesses have also not stated anything against the petitioners and summoning the petitioners will be an abuse of process of the court and as such the impugned order with respect to the petitioners is fit to be set aside. It is also submitted that the Complaint Case No. 2290 of 2011 has already been quashed considering that the husband and wife are living happily together and this case has been filed by way of counter blast.



Saraswati Devi is residing with her husband Vivekanand Jha peacefully. The order passed in Cr. Misc. No. 49956 of 2013 has been annexed as Annexure-4 to the supplementary affidavit.

The learned counsel for the complainant submits that he has got no objection in quashing the cognizance order against the petitioners.

The learned A.P.P. submits that from perusal of the statement of the complainant on the solemn affirmation it reveals that no specific allegation has been attributed against the petitioners.

Having considered the submissions urged at the Bar, going through the complaint petition, statement of the complainant on the solemn affirmation and the statements of the two witnesses and further the impugned order it is manifest that the complainant in her statement recorded on the solemn affirmation has not stated anything against the petitioners regarding their involvement in the occurrence. Saraswati Devi against whom allegation of theft is alleged is none else but the wife of Vivekanand Jha who is witness no.1 in this complaint case. On the record there is no material to summon these petitioners to face the trial in this complaint case.

In view of above, the order dated 06.04.2011 passed in Complaint Case No. 2322 C of 2010 with respect to the



petitioners is hereby quashed.

In the result, this Criminal Miscellaneous is hereby
allowed.

(Jitendra Mohan Sharma, J)

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