

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.34668 of 2013

Arising Out of PS.Case No. -455 Year- 2011 Thana -NALANDA COMPLAINT CASE District-
NALANDA (BIHARSHARIFF)

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1. Bhartendu Singh @ Bhartendu Pd. Singh S/O Late Radhe Krishna Singh Resident of Village Bhagwan Bigha, P.S. Ben, District Nalanda.
 2. Ajay Kumar @ Ravindra Singh S/O Mr. Janakdeo Singh Resident of Village Bhagwan Bigha, P.S. Ben, District Nalanda.
 3. Dhananjay Singh @ Dhananjay Kumar S/O Sri Bhartendu Singh Resident of Village Bhagwan Bigha, P.S. Ben, District Nalanda.
 4. Sanjay Singh @ Sanjay S/O Mr. Janakdeo Singh Resident of Village Bhagwan Bigha, P.S. Ben, District Nalanda.
 5. Kumar Akhilesh Singh @ Kumar Akhileshwar Singh S/O Sadhu Saran Singh Resident of Village Bhagwan Bigha, P.S. Ben, District Nalanda.
 6. Buddhu @ Baddu S/O Sri Fakirchand Mahto Resident of Village Bhabhnima, P.S. Ben, District Nalanda.

.... Petitioners

Versus

1. The State of Bihar.
2. Mukesh Kumar S/O Sri Hareram Singh Resident of Village Bhagwan Bigha, P.S. Ben, District Nalanda.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Thakur with Mr. Rabi
Ranjan, Advocates
For the Opposite Party No.2 : Mr. Suresh Mukhiya, Advocate
For the State : Ms. Suman Kumari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 12-01-2017

The present application has been preferred by the petitioners for quashing the order dated 12.2.2013 passed by Smt. Sulekha Jha, Judicial Magistrate, 1st Class, Biharsharif, Nalanda by which after enquiry she has found a prima facie case against the petitioners under Sections 323 and 379/34 of the Indian Penal Code and ordered for issuance of processes against them.

Prosecution case, in short, is that opposite party No.2, Mukesh Kumar, has filed a petition of complaint before the Chief



Judicial Magistrate, Biharsharif, Nalanda stating therein, inter alia, therein that at about 2 P.M. on 20.4.2011 while he was returning to house, after casting vote from the election booth the accused persons assaulted him and also snatched Rs.30,000/- and when the villagers came the accused persons, including the petitioners fled away. It is also the case of the complainant that police in collusion with the accused persons came to his house and damaged his T.V. and on a false allegation sent him on jail on 21.4.2011 and after coming from jail he got himself treated in Ben hospital on 30.4.2011 and thereafter lodged the present case.

The aforesaid case was sent for enquiry and trial before the court of Smt. Sulekha Jha, Judicial Magistrate, 1st Class, Biharsharif, Nalanda but after enquiry under Section 202 Cr.P.C. finding a prima facie case against the petitioners under Section 323 and 379/34 IPC ordered for issuance of processes vide impugned order dated 12.2.2013 passed in Complaint Case No. 455(C) of 2011.

Against the above impugned order the petitioners have filed this application for quashing the order by which processes have been issued against them.

It has been submitted on behalf of the petitioners that from the complaint petition itself it will appear that a case has been lodged against the petitioners in which they were taken into custody by police and were released on 30.5.2011 but in spite of that the present case has been filed on 3.5.2011 and no explanation has been



given with regard to the delay and, as a matter of fact, one Rabindra Kumar, uncle of the present complainant, had lodged a complaint case before the Chief Judicial Magistrate being Complaint Case No.417(c) of 2011 against opposite party No.2 and others for offences under Sections 147, 148, 323, 341, 342, 452, 379, 427, 500, 504, 509, 295A, 384, 386, 387 and 511 IPC. It is also submitted that apart from that earlier to the filing of the present complaint case mother of opposite party No.2 had lodged a complaint before the Chief Judicial Magistrate being Complaint Case No. 411(C) of 2011, which was later on sent to police for institution of the case for investigation and on the basis of which Ben P.S.Case No. 23/11 dated 25.4.2011 was instituted against the petitioners for offences under Sections 147, 148, 149, 323, 504 and 380 IPC and in that case police after investigation submitted final form finding case not true against all the accused persons, including the petitioners except petitioner No.5, Akhilesh Singh. If the complaint petition filed by mother of opposite party No.2 be perused by the court it will clearly show that for the same occurrence the aforesaid complaint petition has been filed and now again the present complaint has been filed by opposite party No.2 and, as such, it will amount to lodging of two cases for the same occurrence and learned Magistrate prior to order of issuance of processes, ought to have appreciated this fact.

Apart from that it is submitted that petitioner No.5 has also filed a case in injured condition before the police, on the basis of



which Ben P.S.case No. 21/11 dated 20.4.2011 was instituted in which also opposite party No.2 was an accused and in connection with that case he was arrested but later on which he also admits in his complaint petition. Similarly uncle of the present complainant, opposite party No.2 has also lodged a complaint being Complaint Case No. 417(C) of 2011 with almost similar allegation against the petitioners.

On the basis of the above submission, it has argued that the above facts clearly show that a case has been filed by petitioner No.5 in injured condition on 20.4.2011 being Ben P.S.Case No. 21/11 in which opposite party No.2 was arrested and later on two cases were filed by the complainant side, one being filed by mother of the complainant (opposite party No.2) being Ben P.S.Case No. 23/11 dated 25.4.2011 against the petitioners in which after investigation allegation against all the petitioners was not true and charge-sheet has been submitted only against petitioner No.5 and other being Complaint Case filed by the uncle of opposite party No.2 in almost similar allegation and thereafter the present complaint petition has been filed in which vide impugned order dated 12.2.2013 processes were issued against the petitioners. As such, all the above facts clearly show that the present proceeding initiated only to wreck vengeance and settle the score as in a case filed by petitioner No.5, he has been sent to jail and fact has been admitted by opposite party No.2 and that for the same fact earlier to the present complaint petition already a



complaint was filed by mother of opposite party No.2 on the basis of which Ben P.S.Case No. 23/11 was instituted in which except petitioner No.5, Akhilesh Singh, allegation against all the petitioners was not found true after investigation one more complaint petition has been filed by uncle of opposite party No.2. All these facts clearly show that for one occurrence this is the third complaint which has been filed by opposite party No.2, which is against the well settled law of the Supreme Court.

Lastly it has been submitted that the learned Magistrate instead of issuing process ought to have considered this aspect of the matter that opposite party No.2 has himself stated that he was taken into custody by police and in such a situation must have been presented before the court but he had not made any complaint in the court nor he tried to lodge a case against the accused persons at that time and even after release from jail he had lodged the present case after a delay of three days. As such, if present malicious and false proceeding is allowed to continue, it will only be an abuse of the process of the court.

On the other hand, learned APP and learned counsel for opposite party No.2 submitted that he had explained the delay stating that after coming from the custody he got himself treated and thereafter he lodged the case and as such there is no delay in lodging the case and so far earlier complaint filed by mother of opposite party No.2 is concerned, it has been submitted that the facts of that case is



different from the present one. It has also been submitted that the learned Magistrate after enquiry on perusal of materials available during enquiry, finding prima facie case against the petitioners had issued processes in the matter and there is nothing illegal in it.

Heard learned counsel for the parties and perused the record.

In this case there are certain dates and facts which are to be considered first. The occurrence is alleged to be of 20.4.2011 and as per the complaint petition time is said to be 2 O'clock in the noon. So far other complaint filed by mother of opposite party No.2, on the basis of which Ben P.S.Case No. 23/11 was instituted, date of occurrence is same and time of occurrence in the FIR as 2.30 O'clock-3 O'clock in the noon, whereas in the present complaint petition there is cutting and it is mentioned after cutting in the 7 O'clock in the evening and in the complaint filed by Rabindra Kumar, uncle of opposite party No.2 it is mentioned date of occurrence is 20.4.2011 at 3.30 in the noon and so far case lodged by petitioner No.5 Akhilesh Singh in that case date of occurrence is mentioned as 24.11.2011 at about 3.30 in the noon. The aforesaid facts clearly show that all the aforesaid cases have been filed with respect to an occurrence held on 20.4.2011 in the noon time.

It further appears from the materials on record that in the case filed by petitioner No.5, i.e., Ben P.S.Case No. 21/11 opposite party No.2 was taken into custody by police on the same day.



Thereafter complaint case was filed by mother of opposite party No.2 on 21.4.2011 on the basis of which Ben P.S.Case No. 23/11 was instituted and in that case also charge-sheet was submitted after investigation only against petitioner No.5 and against rest of the petitioners case was found not true. Thereafter one complaint was filed by uncle of the complainant which appears to have been filed on 25.4.2011. If the complaints including the present complaint petition be perused it appears that by and large allegations are similar that police entered inside the house assaulted them and taken away articles. No doubt in the complaint petition filed by opposite party No.2 one further allegation has alleged that while he was returning from election booth after casting his vote he was assaulted by the petitioners and thereafter come inside the house and assaulted.

Hence, from perusal of all the cases lodged by them it clearly appears that the case was first lodged by opposite party No.2 in which he was taken into custody and thereafter cases were lodged by mother of opposite party no.2 making allegation against police as well as against the petitioners.

From the above facts a possibility cannot be ruled out that the present complaint petition has been filed only to wreck vengeance and settle the score with the petitioners as the complainant was sent to the custody.

Howeve without giving any opinion all the facts stated above, to my opinion, learned Magistrate ought to have enquire into



all the above facts during course of enquiry, especially on the facts that the petitioner has himself stated that he was in custody.

In view of the discussions made above, the impugned order dated rIn view of the aforesaid facts, the impugned order dated 12.2.2013 passed by learned Judicial Magistrate, 1st Class, Biharsharif, Nalanda in Complaint Case No. 455 (C) of 2011 is not sustainable in the eye of law. Learned Magistrate ought to have considered all these matters, as stated above, while passing the order of issuance of processes.

Accordingly, the impugned order dated 12.2.2013 is quashed and the matter is remanded back to the court below for consideration of the same afresh in the light of the observations made above and on the basis of the materials available on the record. If needed learned Magistrate may make further/fresh enquiry on the basis of materials on the record.

This application is allowed to the extent indicated above.

(Vinod Kumar Sinha, J)

spal/-

AFR/NAFR	
CAV DATE	
Uploading Date	02.02.2017
Transmission Date	02.02.2017

