

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.49786 of 2014

Arising Out of PS.Case No. -2040 Year- 2013 Thana -BEGUSARAI COMPLAINT CSAE District-
BEGUSARAI

- =====
1. Ishrat Khatoon @ Ishrat Praveen @ Ifat @ Iflat Wife of Md. Obais
 2. Md. Sohail @ Heera Son of Md. Akthar
 3. Md. Akthar Son of Late Md. Soeb All residents of Village -
Mobarakpur, Hasanpur Tola, P.S. Bihpur, District - Begusarai.

.... Petitioners

Versus

1. The State of Bihar.
2. Shamim Ahmad Son of Md. Rizwan Resident of Village -
Mubarakpur Tola, Hasanpur, P.S. Bihpur, District - Begusarai.

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Sandip Kumar Gautam, Advocate

For the Opposite Party/s : Mr. Ajay Kr. Jha, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 08-11-2017

Heard learned counsel for the petitioners and
learned Additional Public Prosecutor for the State.

2. The petitioners, in the present case, are seeking quashing of the order dated 12.11.2014 passed by learned Sessions Judge, Begusarai in Criminal Revision No. 300/2014, whereby the learned Sessions Judge, Begusarai has dismissed the Revision Application and refused to set aside the order dated 08.07.2014 passed by Sri R.R. Raman, learned Judicial Magistrate, 1st Class, Begusarai in Complaint Case No. 2040C/2013 filed on 13.09.2013. The learned Judicial Magistrate, 1st Class, Begusarai has taken cognizance of the



offences under Section 323, 379 & 504 of the Indian Penal Code.

3. Learned counsel for the petitioners has filed a supplementary affidavit enclosing therewith the deposition of witnesses produced by the complainant, the same has been taken on the record. Learned counsel submits that the complainant and accused persons are close agnates and have certain land disputes. It is because of the said land dispute, the complainant, in the present case, has filed one after another four complaint cases including the present case in span of 10 days. Besides the present case, petitioner no. 1 has been made an accused in three cases i.e. Complaint Case No. 2128C/2013, 2069C/2013 & 2098C/2013, whereas the petitioner no. 2 has been made accused in Complaint Case no. 2069C/2013 and Birpur P.S. Case No. 763/2013. Petitioner no. 3 has been made an accused in Complaint Case No. 2069C/2013. Learned counsel has produced a web copy of the order dated 21.05.2015 passed by a co-ordinate Bench of this court in Criminal Miscellaneous No. 50778/2014, by which the entire proceeding against all the accused persons including the order of cognizance dated 18.11.2014 passed by learned Judicial Magistrate, 1st Class, Begusarai in Complaint



Case No. 2128C/2013 has been set aside.

4. Referring to the complaint petition (Annexure-1), learned counsel submits that in all the complaint petitions almost similar allegations have been made and the same three witnesses have been produced to support the case of the complainant. The allegations in the complaint petition is that while the complainant was going to his house situated in the village near Jama Masjid and reached on the road near his house, all the accused persons with common intention asked the complainant to stop his motorcycle. It is alleged that when the complainant did not stop and was moving, then, accused Md. Akhtar took out a pistol and threatened the complainant. It is further alleged that, in the meantime, the accused Israt Khatoon @ Israt Praveen took out a sum of Rs. 5,000/- from the pocket of the complainant and, thereafter, all the accused persons gave slap and fists blow to the complainant. It is further alleged that accused Md. Sohail took away one mobile (GV). The complainant alleged that he went to Birpur Police Station, submitted a written report to the Officer-in-Charge, Birpur, but the Officer-in-Charge refused to lodge an F.I.R., thereafter the present complaint is said to have been filed.

5. Learned counsel referring to the solemn



affirmation of the complainant submits that the complainant was examined on oath in course of inquiry, in his statement he changed the place of occurrence and alleged that while he was in his house the accused persons came and committed the alleged act. Learned counsel has specifically drawn my attention to paragraph 2 of the deposition of the complainant in which he has stated that he was alone in the house, there was none with him.

6. Learned counsel then refers the deposition of the inquiry witnesses and submits that in order to support the changed version of the complainant, the witnesses have stated that when they went to the house of the complainant they had seen the alleged occurrence. Learned counsel submits that the case, as disclosed in the complaint petition with respect to place of alleged occurrence, has been completely changed in course of deposition and contrary to the deposition of the complainant that he was alone in his house, the witnesses have come forward to say that they had been present and had seen the alleged occurrence.

7. Learned counsel has submitted that petitioner no. 1, Israt Khatoon @ Iflat @ Israt Praveen gave birth to a baby only on 03.09.2013 at Agrasen Maitri Seva Sadan,



Begusarai, and therefore, it would be highly improbable that she would involve in the alleged occurrence, moreover, on earlier occasion also a co-ordinate Bench of this court has found the allegations against these petitioners false in Complaint Case No. 2128C/2013 and the court was pleased to hold that the said complaint was frivolous in nature.

8. Learned counsel has further placed before me a web copy of the order dated 17.09.2015 passed in Cr. Misc. No. 49291/2014 by a co-ordinate Bench of this court to show that one Sahnaz Begum, wife of Md. Sahadat had also filed Birpur P.S.Case No. 100/2013 against the daughters of Md. Akhtar, the said case was also quashed, holding that in the said case police had found the allegations false, but the learned Magistrate had taken cognizance without there being any material. It is submitted that Md. Sahadat, whose wife had lodged the case, is complainant witness no. 2 in the present case. These are the chain of facts and circumstances brought to the notice of the court and the documents enclosed with the petition to show that the allegations are false and flimsy and it is a *mala fide* prosecution of the petitioners.

9. Although, the Opposite Party No. 2 has entered appearance but has not controverted the statements



made in the petition seeking quashing of the order taking cognizance and the revisional order.

10. Learned Additional Public Prosecutor for the State has argued that once the learned Magistrate has found a *prima facie* case, this court may not interfere with the order taking cognizance at this stage.

11. I have considered the submissions made at the bar and perused the records. There is a force in the submission of learned counsel for the petitioners. Perusal of the complaint petition in the present case and the complaint petitions giving rise to Complaint Case Nos. 2128C/2013, 2069C/2013 & 2098C/2013, would clearly show that all these complaint cases have been filed with the same three witnesses who are named as witness in the present complaint. In all those cases, the allegations are on similar lines. The complainant has admitted in her complaint petition giving rise to Complaint Case No. 2098C/2013, that there is a land dispute between the parties, as according to him, he had got sale deed of some land in his name from his father and other co-sharers. In Complaint Case No. 2069C/2013, there is a similar allegation against the accused persons in the said case, these petitioners are also named there as accused. The same



three witnesses are there.

12. This court find substance in the argument of learned counsel for the petitioners that, in course of his solemn affirmation, the complainant has changed his case and the very place of occurrence is said to be the house of the complainant. In the complaint petition, the complainant has categorically stated that while he reached on the road near his house, the alleged occurrence took place. But, in course of his solemn affirmation, the complainant deposed that he was alone in the house when the alleged occurrence took place and nobody was there, if it is so, then the statement of the complainant witnesses that they had gone to the house of the complainant and had seen the alleged occurrence clearly suggest a false prosecution. The statement of the petitioners that accused no. 1, Israt Khatoon @ Iflat @ Israt Praveen had given birth to a baby on 03.09.2013 only, and it is highly improbable that a lady, who has given birth to a child only ten days before, would be indulging in such occurrence, in absence of any opposition, is acceptable to this court.

13. In view of the discussions, this court would hold that the prosecution of the petitioners in the present case is a *mala fide* prosecution, as allegations are apparently false,



flimsy and deposition of the complainant and his witnesses are vacillating and contrary to each other. While taking cognizance and issuance of summon the learned Magistrate has acted in a routine and mechanical manner. To this court, the deposition do not inspire confidence and seems highly contradictory, therefore, those are not worth acting upon for purpose of issuance of summon. Since this court finds it a mala fide prosecution, continuation of the present proceeding against the accused-petitioners would be an abuse of the process of court. Thus, this court, in the interest of justice, sets aside the revisional order as well as the order taking cognizance and issuance of summons passed by Sri R.R. Raman, learned Judicial Magistrate, 1st Class, Begusarai in Complaint Case No. 2040C/2013.

14. This application is, accordingly, allowed.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	01.11.2017
Uploading Date	08.11.2017
Transmission Date	08.11.2017

