

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.50075 of 2013

Arising Out of PS.Case No. -1348 Year- 2008 Thana -KHAGARIA COMPALINT CASE District-KHAGARIA

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1. Om Prakash Yadav Son Of Naresh Yadav R/O Village-Adarsh Nagar, Phulkia, P.S. Ghogha, District-Bhagalpur, At Present Residence - House No 213 (H-1) Mca P.S. Guru Govind Singh Nagar, A. Division Rambey, Near State Bank Of India, Batala Road, Amritsar, Punjab Petitioner

Versus

1. The State Of Bihar
2. Vijay Yadav, Son of Kailash Yadav, R/O Village-Kanhaichak, P.S. Parpatta, District-Khagaria Opposite Parties

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Appearance :

For the Petitioner : M/S Abhay Kumar Singh & Bharat Bhushan, Advs.

For the Opposite Parties : Mr. Shyam Kumar Singh, APP 138

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 17-01-2017

Heard the learned counsel for the petitioner and the State.

2. This is a petition for quashing the order, dated 29.05.2013, passed by Judicial Magistrate, 1st Class, Khagaria, in Complaint Case No. 1348c of 2008 whereby prayer for discharged under Section 245 of the Criminal Procedure Code has been refused and the accused person was directed to appear before the Court for framing of charge.

3. The petitioner is the informant of Parbatta P.S. Case No. 176 of 2008, lodged against opposite party no. 2, Vijay Yadav, and others for offence under Sections 304B and 120B of the Indian Penal Code on 14.09.2008. Allegation in the first information report is that Vijay Yadav has done to death, for dowry of his wife Sunit Devi, who was sister of this petitioner.

4. In the aforesaid background, allegation is that the petitioner and others entered into the house of opposite party no. 2 and tried forcefully to take away the children of Sunita Devi and committed theft of a box containing cash and ornaments etc. With the aforesaid



allegation Complaint Case No. 1348c of 2008 was brought by opposite party no. 2, Vijay Yadav, against petitioner and others.

5. During enquiry under Section 202 of the Criminal Procedure Code, the children of Sunita Devi were not examined rather other witnesses were examined. Witness no. 1, Kailash Yadav, has, in vague term, stated that the accused person took a box containing cash, ornaments and clothes. Witness no. 2, Mukesh Pandey is specific that co-accused, Shambhu Pandey, had taken the box on his head. Witness no. 3, Saket Rai, is also specific with co-accused, Shambhu Pandey, had taken the box on his head.

6. Grievance of the petitioner against the impugned order is that there is no material against the petitioner attracting the ingredients of the offence alleged and the complaint petition suffers from suppression of material fact leading to the present case, as such, apparently is a case of malicious prosecution.

7. It appears that in spite of service of notice no one appeared on behalf of opposite party no. 2.

8. The learned counsel for the State concedes that there is no material against the petitioner to proceed with the trial.

9. On perusal of the complaint petition as well as statement of witnesses examined during enquiry and statement of the complainant, on oath, it is evident that the complainant has suppressed the background of the allegation and relationship between the parties. There is no material that the petitioner committed theft in the house of the complainant and the charge of theft should be established against individual accused for



the individual act committed. It can not be sustained with the help of Section34 of the Indian Penal Code. More over, there is neither allegation nor material that the accused person entered into the house of the complainant in furtherance of their common intent to commit theft.

10. I am of the view that the facts disclosed and available on record, reveals that complaint petition was filed with intent to malicious prosecution. More over, there is no material to make out a case under Section 380 of the Indian Penal Code against the petitioner, as such, continuance of the criminal prosecution against the petitioner is an abuse of the process of the Court.

11. Hence, the impugned order is **set aside**, against the petitioner, and this application stands **allowed**.

(Birendra Kumar, J)

SA/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	23.01.2017
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