

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.49684 of 2013

Arising Out of P.S.Case No. -554 Year- 2011 Thana -SAMASTIPUR COMPLAINT CASE District- SAMASTIPUR

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1. Subodh Kumar Singh S/O Sri Dinesh Singh Resident Of Village- Lachhuara, P.S-Sikandara, District- Jamui, At Present S.H.O. Musrigharari, P.S. and District- Samastipur.
 2. Viddya Bhushan Singh S/O Sri Jagarnath Singh Resident of Mohalla- Chitrakut Nagar, P.S- Danapur, District- Patna
 3. Md. Jakir Husain Khan S/O Abdul Rajjak Khan Resident of Village- Karhari, P.S- Biraul, District- Darbhanga.

.... Petitioners

Versus

1. The State Of Bihar
2. Pramod Thakur S/O Radhey Shyam Thakur Resident Of Village- Tajpur, P.S- Tajpur, District- Samastipur.

.... Opposite Parties

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Appearance :

For the Petitioners	:	Mr. Bijay Bhushan Prasad, Advocate
For the Opposite Party No.2	:	Mr. Kamendra Prasad Singh, Advocate
For the State	:	Mr. Humayu Ahmad Khan, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 24-07-2017

Heard.

2. This application under Section 482 of the Cr.P.C. has been filed to quash the order dated 18.06.2013 passed by CJM, Samastipur in C.R.No.554 of 2011 whereunder the Magistrate finding prima-facie case for the offence under Sections 323, 341, 506 and 384 of the IPC ordered for issuance of summons. The complainant has alleged that on 05.05.2011 when he was going by his bicycle and reached near the shop of Md. Ekramul, these petitioners who are police came on a jeep and started assaulting him. They brought the complainant at police station and locked him. They demanded Rs.50,000/- for his release. He was threatened that if the demand was not fulfilled he would be booked in a cognizable offence. The complainant out of fear gave an amount of Rs.10,000/- and promised to pay



the rest amount within one week.

3. Learned counsel for the petitioners submits that the petitioners are police officials having protection under Section 197 of the Cr.P.C. The complainant has not obtained sanction for his prosecution. It has been further submitted that there is no eye witness to the occurrence. The statement of complainant and his witnesses are contrary on the point of assault and demand of money. They have filed the complaint case with some ulterior motive. The allegation of assault and demand of money has been made only to make the offence grave. The cognizance is barred by limitation under Section 468 of the Cr.P.C. The Magistrate has passed the impugned order without applying judicial mind and so the same is fit to be quashed.

4. Learned counsel for the Opposite Party No.2 as well as learned APP opposed the submissions. It was submitted that the petitioners' had acted beyond their jurisdiction. The act done by these petitioners was not in connection with discharge of his official duty. They without any rhyme and reason brutally assaulted and locked him at the police station and after taking money released him. The complainant has clean antecedent and he was brought at P.S. and locked in police station even without making any entry in station diary. The matter was enquired by the Superintendent of Police and the petitioners were found guilty of committing assault on the complainant. They were found guilty for taking money from this complainant also. The petitioners were suspended by the Superintendent of Police on 01.08.2011 and a departmental proceeding was ordered to be initiated. Learned counsel for the Opposite Party No.2 in support of his contention has filed Annexure-B along with supplementary affidavit. He further submits that the Opposite Party No.2 was brutally assaulted and he was treated at a private nursing home. The injury report has been annexed as Annexure-A to the supplementary affidavit.



5. On perusal of complaint petition, impugned order and annexures, I find that the complainant has specifically alleged that on the date of occurrence all the petitioners assaulted him by means of lathi and brought him to the police station and locked him in Hazat. A demand of Rs.50,000/- was made for his release. The complainant on solemn affirmation and other witnesses have supported the allegation of assault. From Annexure-4 of the criminal miscellaneous application, it appears that the Deputy Superintendent of Police enquired into the matter and submitted a report to the Superintendent of Police. The Dy.S.P. has reported that there was no entry in station diary as regards bringing the complainant at police station on 05.05.2011. From Annexure-B series of supplementary affidavit, it further appears that the petitioners were found guilty for illegal for confining the Opposite Party No.2 in Hazat and taking an amount of Rs.10,000/- under coercion and threat. These act of petitioners were not done in discharge of official duty. The petitioners were suspended by Superintendent of Police and a departmental proceeding was initiated against them.. The learned Magistrate has rightly taken cognizance against the petitioners. The petitioners will have liberty to raise his defence of protection provided under Section 197 of the Cr.P.C. before the court below.

6. In view of the above facts, I do not find any merit in this application. This application is devoid of merit and is, accordingly, dismissed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	31.07.2017
Transmission Date	31.07.2017

