

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.43321 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- SAMASTIPUR

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1. Shri Narayan Sah, son of late Nokhelal Sah
2. Shambhu Sah, son of Sri Narayan Sah
Both resident of village Maulavi Chak, Nawadah, P.S. Dalsing Sarai, Distt. Samastipur

.... Petitioner/s

Versus

1. The State of Bihar
2. Sharban Kumar Sah, son of late Jafari Lal Sah, resident of village Maulvi Chak Nawadah, P.S. Dalsing Sarai, Distt. Samastipur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Binay Kumar, Advocate.
Mr. Manoj Madhav, Advocate.
For opposite party No. 2 : Mr. Bijay Bhushan Prasad, Advocate.
Mr. Vandan Singh, Advocate.
For the Opposite Party/s : Mr. Rajeev Nayan, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 12-10-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the entire criminal proceeding including the order dated 5.9.2011 passed by the Judicial Magistrate, 1st Class, Dalsinghsarai, in C.R. No. 236 of 2011/T.R. No. 1697 of 2011 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioners for the offences under Sections 323, 504 and 379 of the Indian Penal Code.

2. Heard learned counsel for the petitioners, learned counsel for the opposite party No. 2 and learned counsel for the State.

3. Learned counsel for the petitioners has submitted that



initially, the complaint was sent to Police Station under Section 156(3) Cr. P.C. and police case was registered. The police after investigation, submitted Final Form stating that there is land dispute between the parties. The learned Magistrate proceeded in the case on the basis of protest petition, treating the same as complaint and by the impugned order dated 5.9.2011, has found *prima facie* case against the petitioners for the offence under Sections 323, 504 and 379 of the Indian Penal Code.

4. Learned counsel for the opposite party No. 2 has appeared and submitted that complainant in his Solemn Affirmation has supported the case. The court below is only required to see *prima facie* case at the time of enquiry. There is no illegality in the impugned order of the learned Magistrate.

5. In the instant case, the complainant has alleged that on the alleged date and time of occurrence the accused Shambhu Sah (petitioner No.2) told the informant to hand over all the articles to him which he refused. Thereafter, Shambhu Sah (petitioner No.2) at the point of country made pistol stopped the complainant and gave threat to kill him. It is further alleged that Sri Narayan Sah (petitioner No. 1) snatched golden chain worth Rs.25,000/- from the complainant and accused Shambhu Sah (petitioner No.2) snatched Rs.3,500/- from the pocket of the complainant. The Petitioner No. 1 gave threat to the complainant that if he will go to the Police Station, he will kill him.

6. The Solemn Affirmation of the complainant has been enclosed with this petition as Annexure-5 along with protest petition filed



by the complainant. To court question, he has stated that he is witness in the case against Narayan Sah. He has stated to court question further that occurrence has taken place at N.H. 28 which is busy road.

7. The statement has been made in paragraph 16 of the petition on behalf of the petitioners that all three witnesses examined during enquiry on behalf of the complainant, namely, Misri Sahani, Sakhicharan Sahani and Ramashish Sahani, are his men. There is no independent witness.

8. The petitioner has made statement that Misri Sahani and Sakhicharan Sahani along with the complainant are accused in Dalsingsarai P.S. Case No. 104 of 1992 for the offence under Section 302 and other allied Sections of the Indian Penal Code and Section 27 of the Arms Act.

9. The witness Ramashish Sahani has given evidence in support of the complainant in other case also i.e. G.R. No. 83 of 2008 before A.K. Singh, Judicial Magistrate, 1st Class, Dalsingsarai. The further statement has been made in paragraph-17 of this petition that complainant is a man of criminal antecedent and three cases are pending against him. The petitioner had earlier filed petition for institution of Proceeding under Section 107 Cr. P.C. against father of the complainant.

10. The complainant has stated in Solemn Affirmation, to court question, that occurrence has taken place at N.H.28 which is busy road.

11. Learned counsel for the petitioner has relied on a



decision reported in *2006 (4) PLJR-314 (Shankar Patel and Others Vrs. The State of Bihar and Another)* and has submitted that the instant complaint has been maliciously instituted by the complainant with ulterior motive for wreaking vengeance due to private and personal grudge. The police has found land dispute between the parties during investigation and accordingly, submitted Final Form holding land dispute between the parties.

12. Accordingly, the impugned order dated 5.9.2011 passed by the Judicial Magistrate, 1st Class, Dalsinghsarai, in C.R. No. 236 of 2011/T.R. No. 1697 of 2011 along with the entire criminal Proceeding against the petitioners, is hereby quashed.

13. This Criminal Miscellaneous application is accordingly allowed.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	24/10/2017
Transmission Date	24/10/2017

