

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.21096 of 2014

Arising Out of PS.Case No. -2819 Year- 2011 Thana -SIWAN COMPLAINT CASE District-
SIWAN

=====

1. Binod Bharti S/o Shri Sachidanand bharti
2. Sachidanand Bharti S/o Late Bhairav Bharti
3. Kanti Devi W/o Binod Bharti
4. Himanshu Bharti S/o Binod Bharti All are resident of village - Pokhara Mathia,
P.S. Maharajganj, District - Siwan

.... Petitioner/s

Versus

1. The State of Bihar
2. Vijay Kumar Giri S/o Late Sharvan Giri resident of Village - Karnpura, P.O.
Karanpura, Via - Baliya, P.S. Gautam Bugh Marg Tarwara, Distt. - Siwan

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Amrendra Kumar

For the Opposite Party/s : Mr. Bharat Bhushan (APP)

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 15-09-2017

Heard learned counsel for the petitioners and learned
counsel for the State.

This application has been filed by the petitioners for
quashing the order dated 16.04.2013 passed in Complaint Case No.
2819/2011, whereby the learned Judicial Magistrate Sri S. Agnihotri
has taken cognizance for offences under Sections 147, 447, 323 and
379 of the Indian Penal Code and issued process to the petitioners in
this case.

Notice was issued to opposite party no. 2 vide order
dated 14.07.2017. It appears from the service report that notice was



personally received by opposite party no. 2. Hence, the opposite party has no reason not to appear in this proceeding.

The complainant has filed the case against five accused persons including the petitioners alleging that the petitioners have threatened the complainant of dire consequences showing knife and took away Rs. 5,000/- from his pocket and also took away his Laptop worth Rs. 33,000/-.

It appears from the order sheet that the petitioners, by such acts, wanted to grab the property of the wife of the complainant.

Learned counsel for the petitioner submits that they have been falsely implicated in this case for the reason that these petitioners are witnesses against the complainant in Complaint Case No. 250/2010, in which the learned Magistrate after holding enquiry took cognizance under Section 323/34 of the Indian Penal Code against the complainant and others.

Learned counsel for the petitioner further submits that prior to lodging the present case the complainant had filed Complaint Case No. 277/2010 against his wife and the petitioners. Thereafter the relatives of the complainant had also filed other complaint case, which shows the pressure tactics of the complainant and his relatives. The present complaint is designed to exert pressure on these petitioners, who are witnesses in Complainant Case No. 250/2010.



Learned counsel for the petitioners has drawn the attention of the Court towards the order passed on 28.06.2017 in Cr. Misc. No. 19303/2014, whereby this Court, on the complaint filed by Nityanand Giri against petitioner no. 3, on account of her husband being a witness of Complaint Case No. 250/2010, and after considering the attending facts and submission set aside the order taking cognizance dated 19.09.2013 passed in Complaint Case No. 2874/2010.

Further it has been submitted that the present case is also on the similar footing as that of Complaint Case No. 2874/2010 and the order taking cognizance in that case dated 19.09.2013 has already been quashed vide judgment dated 28.06.2017 and as such this Court should adopt the same approach.

Considering the background of the complaint case and the fact that despite service of notice upon opposite party no. 2, no one appeared on behalf of opposite party no. 2, and considering the facts and circumstances that the complainant and his family has filed various complaint cases as a counter blast, in fact, petitioner no. 1 is a witness in Complaint Case No. 250/2010, in which the complainant and his brother is accused, the Court is of the considered view that the filing of various/repeated complaint cases comes within the category of exception. Cases to be dealt with under



Section 482 of the Cr.P.C. Reliance in this connection may be made to the case of *State of Haryana Vs. Chaudhary Bhajan Lal* reported in *AIR 1992 SC 604* whereby, the Apex Court has laid down the principle to be followed in exercise of jurisdiction under Section 482 of the Cr.P.C.

Accordingly, the order taking cognizance dated 16.04.2013 in Complaint Case No. 2819/2011 being abuse of process of law is quashed.

The application is, accordingly, allowed.

(Anil Kumar Upadhyay, J.)

Rakhi

AFR/NAFR	
CAV DATE	N.A.
Uploading Date	21.09.2017
Transmission Date	21.09.2017

