

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.10271 of 2014

Arising Out of PS.Case No. -1073 Year- 2013 Thana -VAISALI COMPLAINT CASE District-
VAISHALI(HAJIPUR)

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1. Ram Awtar Sahu S/O Late Mahanth Sahu
2. Sanjeev Kumar S/O Late Mahanth Sahu
3. Pavitri Devi @ Parwati Devi W/O Ram Awtar Sahu All Resident Of
Village- Adarsh Colony, (Pavitri Sadan), Rukunpura, P.S- Rukunpura,
Distt- Patna.

.... Petitioner/s

Versus

1. The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Upendra Mishra, Advocate

For the Opposite Party/s : Mr. Lalan Kumar(App)

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**CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN
SHARMA**
ORAL ORDER

5 14-07-2017 Heard learned counsel for the petitioners and learned
A.P.P. for the State. No body is present on behalf of O.P. No. 2.

This criminal miscellaneous has been filed for
quashing the order dated 24.07.2013 passed by the S.D.J.M.,
Hajipur, Vaishali, whereby and where under, summons have been
ordered to be issued against the petitioners for committing the
offences under Sections 323 and 379 IPC as prima facie offence
under both sections have been found.

As per complaint the complainant was married to the
daughter of accused nos. 1 and 3 on 18.08.2012, accused no. 1
came at the residence of complainant at Gandak colony and



returned with his daughter with an assurance that his wife would come back at Hizipur in few days. After some days complainant went to take his wife but accused no. 1 did not allow to take his wife. After some days when complainant opened the almirah in his house he found that some valuable papers and some jewelry of his mother was missing, then complainant with his brother Ranjan Kumar visited the house of accused no. 2 and asked about the missing jewelry and valuable papers then accused persons abused the complainant and threatened to kill him.

After getting information regarding birth of son of the complainant, he went there but accused persons assaulted the complainant with the butt of pistol and snatched the gold chain worth Rs. 45,000/- and on 15.04.2013 at about 7.30 in the evening accused no. 2 visited the complainant's house at Hajipur with three unknown persons and inquired about filing of any case in the court against them and when complainant answered in negative, then all accused persons assaulted the complainant with an intention to kill the complainant and took Rs. 2500 from the bed and fled away.

The complainant was examined on solemn affirmation and two enquiry witnesses were also examined and thereafter the impugned order has been passed.



Submission is that the petitioner no. 1 is father-in-law of the complainant and at the time of alleged occurrence he was posted at Purnea Police Station, petitioner no.-3 is mother-in-law and she lived at Rukunpra, Patna and petitioner no. 2 is brother-in-law of the complainant and he was a student of MCA at the time of alleged occurrence at Gaziyabad. The real fact is that after marriage of the daughter of petitioner no. 1 and 3 with complainant in the year 2006, the complainant and other in-laws started torturing her in various ways for demand of dowry and resorted to frequent assault, consequently the daughter of petitioner nos. 1 and 3 lodged Kotwali P.S. Case No. 232 of 2010 against the husband and other in-law on 10.08.2010 itself. The instant case has been lodged implicating the entire family members in counter blast in Kotwali P.S. Case No. 232 of 2010 filed by the wife of the complainant under Section 498(A) of the IPC and Section 3/4 D.P. Act.

From perusal of the complaint petition it is amply clear that no offence under Section 323 and 379 IPC is made out and, as such, the impugned order is fit to be set aside. Fake and bald allegation of theft were alleged against the father-in-law, mother-in-law and brother-in-law who at the time of occurrence were living at different places and, as such, presence of the petitioners



at the time of occurrence at Hajipur is inherently absurd, improbable and mala fide and, as such, this case is fit to be quashed.

From perusal of the complaint petition it reveals that this case has been filed in retaliation of the case lodged by the wife of he complainant.

The learned A.P.P. submits that after considering the statement of complainant on solemn affirmation and the statement of two enquiry witnesses, the impugned order has been passed.

In the facts and circumstances stated above, considering that from perusal of the complaint petition, the statement of complainant on solemn affirmation and statement of two enquiry witnesses, it is evident that the enquiry witnesses have not supported the allegation specifically against the petitioners. The learned court below has not considered the statement of enquiry witnesses properly and without considering their statements in right perspective has passed the impugned order.

Enquiry witness No. 1 Om Prakash Singh has not stated regarding taking away ornaments etc. rather he has said that the complainant stated him that accused persons took away articles and cash of Rs. 25,000/- Similarly enquiry witness no. 2 has stated that the petitioner no. 1 took away the wife of the complainant with consent and at the time of departure she took away the



ornaments but surprisingly the wife of the complainant i.e. daughter of accused no. 1 and 3 has not been made accused, that witness has not stated regarding taking away cash of Rs. 2500/-. The learned Magistrate has over looked all these things and has passed the impugned order without considering the materials available on record.

In the result, the impugned order dated 24.07.2013 passed by S.D.J.M., Hajipur, Vaishali in Complaint Case No. 1073 of 2013 is hereby quashed and the entire criminal proceeding stands quashed.

Accordingly, this criminal miscellaneous stands allowed.

(Jitendra Mohan Sharma, J)

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