

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.31715 of 2014

Arising Out of PS.Case No. -1244 Year- 2013 Thana -GOPALGANJ COMPLAINT CASE District-
GOPALGANJ

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1. Barister Sah @ Barister Gupta @ Barister Gorakh Gupta Son of Late Gorakh Sah
2. Lalita Devi Wife of Barister Sah
3. Indu Devi @ Indu Barister Gupta Wife of Barister Sah @ Barister Gupta @
Barister Gorakh Gupta all the above resident of village- Bangara Bazar, P.S.-
Bijaipur, District- Gopalganj, out of above three Petitioner no. 1 and 3 are Presently
residing at flat no.- A/103, First Floor, Saidham, Nallasopara (E), Plot no.- 30 and
31, Central Park, Taluq Vasai, District- Thane. Petitioners.

Versus

1. The State of Bihar
2. Ramji Sah Son of late Gorakh Sah resident of village- Bangra Bazar, District-
Gopalganj. Opposite Parties.

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Appearance :

For the Petitioners : Mr. Rameshwar Pandey, Adv.
For the Opposite Party/s : Mr. H.A. Khan, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL**

ORAL JUDGMENT

Date: 28-07-2017

This petition under Section 482 of the Code of Criminal Procedure has been preferred against the order dated 30.01.2014 passed by learned Judicial Magistrate 1st Class, Gopalganj in Complaint Case No.1244 of 2013, corresponding Trial No.3472 of 2014, whereby finding prima facie case under Sections 323, 379/34 of the Indian Penal Code against the petitioners, the learned Magistrate has ordered to issue summon against them.

It has been submitted by learned counsel for the petitioners that petitioner no.1 has filed a case against opposite party no.2 and his family members, bearing Bijaipur P.S. Case



No.82 of 2013 on 18.05.2013. In the said case, after investigation and finding the case to be true, the I.O. has submitted the chargesheet on 31.05.2013 against the opposite party no.2. Due to filing of the aforesaid case by the petitioner against the opposite party no.2, he has filed this false and frivolous case against them as a counterblast to the said case with ulterior motive and mala fide intention to mount pressure upon them. Hence, cognizance taken against the petitioners in the case at hand is sheer abuse of the process of the Court.

In spite of service of notice no one is present on behalf of opposite party no.2.

From perusal of the records, it appears that the opposite party no.2 filed a complaint petition against the petitioners with the allegation in succinct that he constructed a house in the share of the land allotted to him in the partition amongst the brothers. On the date of occurrence, while the slab of the wash room was being laid, his elder brother, Barister Sah (petitioner no.1) along with his two wives descended there and started slating him. When he forbade them from slating, they assaulted him by means of lathi. When his wife rushed in his rescue, they also assaulted her and snatched her golden chain. Barister Sah (petitioner no.1) also pressed his neck climbing on his



chest. He was anyhow saved by his family members.

The record further indicates that petitioner no1.- Barrister Sah has filed Bijaipur P.S. Case No. 82 of 2013 under Sections 341, 323. 504 and 307/34 of the Indian Penal Code against opposite party no.2 and his family members on 18.05.2013 and after investigation in the said case and finding the case true, I.O. has submitted chargesheet against the opposite party no.2 and others. This case was filed by opposite party no.2 ten days later to that case. Hence, the case under hand appears to have been filed in retaliation and with mala fide intention.

Considering the facts and circumstances of the case, in my considered opinion, taking cognizance against the petitioners in the case under hand is sheer abuse of the process of the Court. Hence, this petition is allowed and the impugned order is quashed.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.08.2017
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