

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.40444 of 2014

Arising Out of PS. Case No. -266 Year- 2010 Thana -SHEKHPURA COMPLAINT CASE District-
SEKHPURA

- =====
1. Ramashish Singh Son of Sri Mangal Singh
 2. Nirmala Devi Wife of Sri Ramashish Singh
 3. Vishal Kumar Son of Sri Ramashish Singh
 4. Rajeev Kumar Son of Sri Ramashish Singh, All resident of village- Hashna, P.S.- Pakari Barama in the district of Nawada
 5. Mamta Devi Daughter of Ramashish Singh, Wife of Sri Sonu Kumar Singh resident of village- Sirai, P.S.- Barbigha, in the district of Sheikhpura, Presently resident of village- Hashna, P.S.- Pakari Barama, in the dsitric of Nawada

.... Petitioner/s

Versus

1. The State of Bihar
2. Santosh Kumar Son of Sri Bijay Ram, resident of village- Shanti Nagar Mission Chowk, Barbigha, P.S.- Barbigha in the district of Sheikhpura

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Akhileshwar Prasad Singh, Sr. Adv.
Surendra Prasad Singh, Adv.

For the Opposite Party No.2 : Mr. Birendra Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date: 18-10-2017

The present case arises out of Complaint Case No. 266C of 2010 dated 20.07.2010 filed by the Opposite Party No.2 against the petitioners herein, inter alia, alleging therein that the brother of the complainant, namely, Sonu Singh was married to the petitioner no.5 in the year 2003 and after marriage, the father of the petitioner no.5 i.e. petitioner No.1 had requested the father of the Opposite Party No.2 to help him financially by giving a sum of Rs. 50,000/- which would definitely be returned within two months. Thereupon, the father of the Opposite Party No.2 had given a sum of Rs. 50,000/- to the



petitioner no.1, however, after two months when the Opposite Party No.2 asked for the said amount from the petitioner no.1, he did not return the same. Thereafter, the Opposite Party No.2 had again gone to the residence of the petitioner no.1 and requested for return of the money, but instead of returning the same, the petitioner no.1 had demanded a further sum of Rs. 15,000/- as the same was required for opening of a shop. Subsequently, the petitioner no.1 had convinced his daughter that since her mother was ill and they had to go to Patna for the purpose of treatment, she should immediately come after taking the gold and silver jewelry as also the cash available at her home, whereupon the petitioner no.5 became ready and she told her in-laws that she was going to her parents place since her mother was ill and thereafter, she took away gold jewelry weighing 7 tola and silver jewelry weighing around 20 tola as well as cash amounting to Rs. 15,000/-. The petitioner no.1 had by committing fraud and cheating the in-laws, kept all the jewelry. It has been further alleged that the complainant had then gone to the house of the petitioner no.1 and asked for his money, whereupon the petitioner no.1, his wife and other family members abused him and started assaulting him. Thereafter, the complainant came back to his house, whereafter Panchayati was held on 19.07.2010 and during the course of the same, the petitioner no.1 started beating the complainant and also ordered



his two sons to put the towel in his neck and press the same so that the complainant dies, whereafter the said two sons had put the towel in the neck of the complainant and started pulling the same with intention of killing the complainant. In the meantime, the petitioner no.2 i.e. Nirmala Devi is said to have snatched gold chain from the neck of the mother of the complainant and the petitioner no.1 also took out Rs.6300/- from the pocket of the complainant.

2. The complainant was examined on solemn affirmation by the learned trial court on 21.07.2010 and in his statement though, he has reiterated the contents of the complaint petition in brief, but he has not stated anything about the petitioner no.2 having snatched gold chain from the neck of his mother nor any allegation whatsoever has been levelled against the petitioner no.5. One Devendra Kumar has been examined on oath as complaint witness no.1 and he has also reiterated the story set-forth by the complainant in his complaint petition, however, neither the incident of snatching of chain by the petitioner no.2 has been substantiated nor any allegation has been levelled against the petitioner no.5. Similarly, C.W. 2, namely, Sunaina Devi has also reiterated the contents of the complaint in brief, but has neither alleged anything either against the petitioner no.2 or petitioner no.5. In fact, she has also not made allegation against the petitioner nos. 3 and 4. Bijay Ram has been



examined as C.W. 3 and he has also reiterated the contents of the complaint petition in brief. However, he has not alleged anything against the petitioner no.2 or petitioner no.5. This witness has admitted that the petitioner no.5 had filed a case against her husband and the brother of the complainant on account of non-fulfillment of demand of dowry. C.W.4 is Pramhansh Kumar and he has also reiterated the complaint in brief, however, this witness has not made any allegation as against the petitioner no.2 or the petitioner no.5.

3. It may be relevant to mention here that the petitioner no.5 has filed a Complaint Case No. 1342 of 2009 dated 11.11.2009 against the Opposite Party No.2, her husband Sonu Singh, her in-laws and other family members and relatives of her in-laws under Sections 498(A), 323, 342, 379/34 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act, wherein the learned trial court by an order dated 3.6.2010 has been pleased to issue summons against the husband of the petitioner no.5, namely, Sonu Singh, Bijay Ram, (father-in-law of the petitioner no.5) and Sunaina Devi (mother-in-law of the petitioner no.5) under Sections 498(A) and 323 of the Indian Penal Code. In fact, the learned trial court has also framed charges against the aforesaid three persons for the offence punishable under Sections 498(A) and 323 of the Indian Penal Code on 2.7.2012, whereafter the trial is going on.



4. Now, coming to the present case, the learned court of Chief Judicial Magistrate, Sheikhopura by an order dated 20.08.2011 passed in Complaint Case No. 266C of 2010, upon perusal of the records and the evidence of the witnesses examined in support of the complaint, has found out a prima facie case under Sections 379, 323, 504, 420/34 of the Indian Penal Code and has been pleased to direct for issuance of summons against the accused persons named in the complaint i.e. the petitioners herein.

5. The aforesaid order dated 20.08.2011 is under challenge in the present petition.

6. The learned Senior Counsel appearing on behalf of the petitioners, has argued that the present case has been lodged in a mala fide manner at the behest of the husband of the petitioner no.5 and the in-laws of the petitioner no.5 by the brother of the husband of the petitioner no.5 only after summons were issued against the brother, father and mother of the complainant in the complaint case filed by the petitioner no.5. It has been further argued that a bare perusal of the materials on record would show that no case is made out for the offence as alleged by the complainant.

7. Per contra, the learned counsel for the Opposite Party No.2 has submitted that since there are ample material available so as to prima facie make out a case against the petitioners herein as



well as the allegations levelled in the complaint petition definitely constitutes commission of a cognizable offence, the present petition filed by the petitioners is devoid of any merit and is fit to be dismissed.

8. I have gone through the materials on record as well as the deposition of the witness Nos. 1 to 4 examined in support of the complaint petition. True it is that the connected complaint Case No. 266C of 2010 has been filed on 20.07.2010 i.e. after issuance of summons by the learned trial court by an order dated 03.06.2010 passed in Complaint Case No. 1342 of 2009, filed by the petitioner no.5, a bare perusal of the complaint petition especially read with the evidence of the witnesses examined in support of the complaint would show that as far as the petitioner no.2 and petitioner no.5 are concerned, no allegation whatsoever has been levelled against them by the complaint witness no.1 to complaint witness No.4. However, I find from the aforesaid record that the allegations have been levelled against the petitioner no.1, petitioner no.3 and petitioner no.4, which have duly been supported by the complaint witness nos. 1 to 4, hence a prima facie case is definitely made out to proceed against them since the said allegation discloses the commission of cognizable offences.

9. For the reasons mentioned herein above and in view of the law laid down by the Hon'ble Apex Court in a judgment



reported in *1992 Supp (1) SCC 335 (State of Haryana vs. Bhajan Lal)*, I find that the order dated 20.08.2011 issuing summons as against the petitioner no.2 and petitioner no.5 is unjust, illegal and perverse, hence, the order dated 20.08.2011 passed by the learned Chief Judicial Magistrate, Sheikhpura in Complaint Case No. 266C of 2010 is hereby set aside in so far as the petitioner nos. 2 and 5 are concerned and, accordingly, the Complaint Case No. 266C of 2010, as against the petitioner nos. 2 and 5, also stands quashed.

10. It is made clear that the Complaint Case No. 266C of 2010 as also the pending proceedings emanating therefrom shall continue as far as petitioner nos. 1,3 and 4 are concerned and the present order would not prejudice the same.

11. The petition is allowed in part to the aforesaid extent.

(Mohit Kumar Shah, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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