

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.35730 of 2011

Arising Out of Complaint Case No. -630 C Year- 2009 District- NAWADA

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1. Nitu Kumari, W/o Manikant Kumar, D/o Kumar Awadhesh, R/o Village -
Hasanpur, P.S. -Jamalpur, Distt. - Munger

2. Kumar Awadhesh, S/o Jagdish Prasad Yadav, R/o Village - Hasanganj, P.O.
Safiyabad, P.S.- Jamalpur, Distt. - Munger

.... Petitioners

Versus

1. The State of Bihar

2. Mukesh Kumar,

3. Manikant Kumar

Both sons of Late Arjun Prasad R/o Mohalla - Rajendra Nagar Colony, Near
Induwala Press, Nawadah, P.O. & P.S.- Nawadah, Distt. - Nawadah

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Manohar Prasad Singh, Advocate

For the Opposite Party no.2 : None

For the State : Mr. Dilip Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 23-11-2017

Heard learned counsel for the petitioners and learned
counsel for the State. Though, the complainant-opposite party no.2
and his elder brother Manikant Kumar (opposite party no.3) are
being represented through Mr. Birendra Kumar, learned Advocate,
but on repeated calls, he has failed to appear before the Court and



contest the matter.

2. This application under Section 482 of the Code of Criminal Procedure (for short 'Cr. P.C.') has been filed by the petitioners for quashing the order dated 20.08.2010 passed by the learned Judicial Magistrate-1st Class, Nawada in Complaint Case No.630(C) of 2009 by which the petitioners have been summoned to face trial for the offences punishable under Sections 341, 323 and 504 of the Indian Penal Code.

3. In the complaint petition, the complainant has alleged that the accused Nitu Kumari (petitioner no.1) is legally married wife of complainant's brother Manikant Kumar (opposite party no.3). On 16.05.2009, the complainant and his brother Manikant Kumar met with an accident near Biharsharif, Nalanda when both of them were returning from Nawada and in the said accident, his brother Manikant Kumar got multiple fracture injuries. After treatment, he was advised bed rest by the doctor. When the news of accident was communicated to the accused Nitu Kumari, she along with her father Kumar Awadhesh (petitioner no.2) and two other unknown persons came to the complainant's house on 30th May, 2009 at 4:50 p.m. They stayed in the house of the complainant on 30.05.2009 and in the morning, on 31.05.2009, the accused Nitu Kumari told the complainant and his family members that as her



husband had become handicapped, she would not live with him. She also took away two boxes containing ornaments and clothes worth Rs.1,50,000/- with the help of her father Kumar Awadhesh. When the alleged act of the accused Nitu Kumari was protested by the complainant, her father Kumar Awadhesh used abusive language and took out pistol from his bag and assaulted the complainant with *butt* of the pistol and also opened fire.

4. After filing of the complaint petition in the court, the complainant was examined on solemn affirmation in which he has not made any allegation that the accused Kumar Awadhesh assaulted him with *butt* of pistol. He has also not stated that the accused Nitu Kumari and Kumar Awadhesh were being accompanied by some other persons. In course of inquiry conducted under Section 202 of the Cr.P.C., three witnesses were examined on behalf of the complainant, namely, Manikant Kumar, Deopati Devi and Yugeshwar Sharma. E.W. 1 Manikant Kumar, husband of the petitioner no.1, in his statement, did not support the allegation of the complainant that Kumar Awadhesh opened fire when the complainant protested the action of the accused Nitu Kumari. E.W.2 Deopati Devi is the mother of the complainant. In her statement, she has stated that when Nitu Kumari went together with her father Kumar Awadhesh, she also took away her two boxes in which



valuables worth Rs. 1,50,000/- were kept. E.W.2 Yugeshwar Sharma also supported the complaint to the effect that the accused Nitu Kumari stated that she would not live together with Manikant Sharma.

5. Referring to the statement of the witnesses, learned counsel for the petitioners submitted that the entire allegations made in the complaint are absurd. He submitted that the complaint has been filed by the complainant in order to create defence against any future action which the petitioner Nitu Kumari could have taken against the complainant and his family members. He submitted that the relationship between the complainant and her husband was strained and the complainant never ever visited her matrimonial home after she was ousted from there. However, when she heard news of accident of her husband, she along with her father went to see him, but there also the complainant and his family members ill-treated them and, thus, they immediately came back. However, apprehending that the complainant may take legal action against the petitioners, they instituted the present false case. He submitted that even otherwise, the statements of witnesses recorded are materially different and the learned Magistrate without application of his judicial mind to the facts of the case took cognizance of the offence punishable under Sections 341, 323 and



504 of the Indian Penal Code even though, there was no material for taking cognizance of these offences.

6. As noted above, the counsel for the complainant has not appeared to contest the matter, however, learned counsel for the State submitted that the witnesses have partially supported the story narrated in the complaint and, thus, the cognizance order cannot be said to be bad at this stage. He submitted that the petitioners may cross-examine the witnesses before framing of charges and seek their discharge, if no case is made out against them, but this is not the stage when this Court would exercise its power under Section 482 of the Cr.P.C.

7. I have heard learned counsel for the petitioners and the State and carefully perused the record including the impugned order taking cognizance of the offences under Sections 341, 323 and 504 of the Indian Penal Code.

8. It would be pertinent to note that Section 341 of the Indian Penal Code prescribes punishment for wrongful restraint. In the present case, there is absolutely no allegation that the petitioners restrained any one wrongfully rather, the allegation is that after staying for a night in the house of the complainant, they decided not to live further and departed from the house of the complainant. In such view of the matter, by no stretch of



imagination, it can be said that the ingredients of the offence punishable under Section 341 of the Indian Penal Code are attracted in the present case.

9. So far as Section 323 of the Indian Penal Code is concerned, the same prescribes punishment for voluntarily causing hurt. It is true that there is allegation in the complaint that the complainant was assaulted with *butt* of pistol by petitioner no.2 Kumar Awadhesh, but said allegation has not been supported by the complainant in his statement made on oath.

10. Similarly, Section 504 of the Indian Penal Code prescribes punishment for the offence of intentional insult with intent to provoke breach of the peace. It is true that a vague allegation has been made in the complaint that the petitioner no.2 Kumar Awadhesh used abusive language and opened fire, but such statement has also not been fully supported by the witnesses in course of inquiry. The witnesses examined in course of inquiry have made contradictory statement to each other. Though, it is alleged in the complaint that the complainant took away two boxes from the house of the complainant, the complainant's mother stated during enquiry that the complainant took away her two boxes containing ornaments and clothes. Even otherwise, looking at the relationship of the complainant with the accused petitioners, the story narrated in



the complaint seems to be highly improbable.

11. Apparently, there was nothing in the complaint on the basis of which the learned Magistrate could have summoned the accused Nitu Kumari. Learned counsel for the petitioners has rightly submitted that the learned Magistrate failed to apply his judicial mind and has mechanically passed the impugned order. The Court is of the opinion that a malicious prosecution has been initiated by the complainant against his brother's wife and her father and, thus, allowing such a frivolous complaint to continue would amount to an abuse of the process of the court.

12. Resultantly, the impugned order dated 20.08.2010 passed by the learned Judicial Magistrate-1st Class, Nawada in Complaint Case No.630(C) of 2009 is hereby quashed.

13. The application stands allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.12.2017
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