

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.39619 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- BEGUSARAI

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1. Pawan Kumar Luharika, son of late Murlidhar Luharika, resident of village P.S. Fulharia, Distt. Begusarai.
 2. Tarkeshwar Chourasia, son of Kapildeo Chourasia, resident of village Barouni-I (Debha Toli), P.S. Teghra, Distt. Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar
2. Baby Devi, wife of Dilip Singh, resident of village Sograha, P.S. Fulwariya, Distt. Begusarai.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Jha, Advocate.
Mr. Chandan Kumar Kashyap, Advocate.
For the State : Mr. D. Mehta, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 11-09-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 28.9.2011 passed by the learned Judicial Magistrate, 1st Class, Begusarai, in Complaint Case No. 705C of 2011 by which the learned Magistrate after holding enquiry, has found *prima facie* case against the petitioners and other accused persons for the offences under Sections 323, 341, 354 and 509 of the Indian Penal Code.

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

3. The notice was issued to the opposite party No. 2 which was validly served but she did not appear.



4. Learned counsel for the petitioners has submitted that this is a malicious prosecution. The scuffle took place between petitioner No. 1 and Brahamdeo Ram who is Advocate Clerk in Begusarai Civil Court, for which, petitioner No. 1 has filed Fulwaria P.S. Case No. 32 of 2011 against Brahamdeo Ram and others, as named in the written report, for the offence under Sections 341, 354 and 509 of the Indian Penal Code.

5. Learned counsel for the petitioners has submitted that the instant case has been filed by Baby Devi in which one of the witness has been named as Neelam Devi and the time of occurrence is said to be 6:00 p.m. on 18.04.2011. The aforesaid Neelam Devi has filed Complaint Case No. 690C of 2011 mentioning same time and date of occurrence against petitioner No. 1 and two other persons for the offence under Sections 323, 395, 376 and 504/34 of the Indian Penal Code.

6. In the instant case, during enquiry under Section 202 Cr. P.C., the said Neelam Devi has been examined as Enquiry Witness No. 1. She has stated that while she was coming with Baby Devi on the date of occurrence at 6:00 p.m., the petitioners along with other accused persons attempted to stop her. She told about the occurrence to her son and daughter. She met with Baby Devi in the next morning. Baby Devi told her about the occurrence committed by



the petitioners and other accused persons. To court question, she has stated that Punam Devi and Rubi Devi were also with her besides Baby Devi.

7. The complainant was examined during enquiry on Solemn Affirmation wherein she has stated that all the accused persons took her to the house of Tarkeshwar Chaurasia and confined in a room and, thereafter, committed illegal act with her, but to court question, she has stated that medical examination of her was not ever done.

8. Punam Devi (Enquiry Witness No. 2) has stated that she learnt about the occurrence from Baby Devi on the next morning.

9. The learned Magistrate has by impugned order without properly appreciating the statement of witnesses during enquiry, found prima facie case for the offences under Sections 323, 341, 354 and 509 of the Indian Penal Code against the petitioners and other accused persons.

10. In such circumstances, after looking into the Solemn Affirmation of the complainant and the statement of other witnesses recorded during enquiry, this Court is of the view that the impugned order passed by the learned Magistrate is not in accordance with law.



11. Accordingly, the impugned order dated 28.9.2011 passed by the learned Judicial Magistrate, 1st Class, Begusarai, along with the entire Criminal Proceeding against the petitioners, in Complaint Case No. 705C of 2011 is hereby quashed.

12. This Criminal Miscellaneous application is accordingly allowed.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	03/10/2017
Transmission Date	03/10/2017

