

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.11456 of 2014

Arising Out of PS.Case No. -3248 Year- 2010 Thana -PATNA COMPLAINT CASE District-
PATNA

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1. Madhu Modi Wife Shri Mahabir Kumar Modi Resident of Rajendra Nagar,
Road No.-8A, Kadam Kuan, District-Patna-800016

2. Mahabir Kumar Modi, Son of Sri Kashi Prasad Modi Resident of Rajendra
Nagar, Road No.-8A, Kadam Kuan, District-Patna-800016

3. Odhav Modi Son of Shri Mahabir Kumar Modi, Resident of Rajendra Nagar,
Road No.-8A, Kadam Kuan, District-Patna-800016

4. Sanket Mishra C/o Mahabir Kumar Modi Resident of Rajendra Nagar, Road
No.-8A, Kadam Kuan, District-Patna-800016

5. Ramu Alias Prabhu C/o Mahabir Kumar Modi Resident of Rajendra Nagar,
Road No.-8A, Kadam Kuan, District-Patna-800016

.... Petitioner/s

Versus

1. The State of Bihar

2. Rekha Modi D/o Shri Kashi Prasad Modi Resident of 22, Saraswati Apartment,
S.P. Verma Road, P.S.-Kotwali, District-Patna-800001

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Mrigank Mauli Mr. Vinay Mistri
For the Opposite Party/s	:	Mr. Ajay Kumar Mr. Harendra Kumar
For the State	:	Mr. Arun Kumar Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 25-07-2017

This application under Section 482 Cr.P.C. has been filed to
quash the order dated 14.09.2012 passed by the Sri Amit Raj,
Judicial Magistrate, 1st Class, Patna in Complaint Case no. 3248(C)
of 2010 whereunder the Magistrate finding *prima facie* case
summoned the petitioner nos. 2, 4 and 5 to face the trial for the
offence face under Sections 377, 354, 323, 380, 427/34 of the I.P.C.
and the petitioner nos. 1 and 3 for the offence under Sections 354,
323, 380, 427/34 of the I.P.C.



2. Heard both sides.

3. The facts, in brief, is that the O.P. no. 2 filed a complaint case on the file of C.J.M., Patna alleging *inter alia* that on 25.07.2010 at about 5:30 P.M. all the petitioners came and assaulted the complainant. The petitioner no. 2 torn her clothes and committed unnatural offence on her along with petitioner nos. 4 and 5.

4. It has been submitted that the petitioner no. 2 is full brother of the complainant (O.P. no. 2). The petitioner nos. 1 and 3 are wife and son of the petitioner no. 2. The petitioner nos. 4 and 5 are staffs of the petitioner no. 2. There is a property dispute between the petitioner no. 2 and the complainant. The complainant some how or other with ulterior motive maneuvered her father and succeeded in getting a Will executed in her favour as well as in the name of her mother on 28.07.2003. The father, subsequently, revoked the said Will on 07.04.2009 and executed a registered deed of gift on 08.04.2009 in favour of the petitioner no. 2. The complainant filed a Title Suit nos. 216 of 2010, 235 of 2011 and 34 of 2012. Out of them, Title Suit nos. 235 of 2011 and 34 of 2012 are still pending in Civil Court at Patna. The complainant has filed several cases before different forum in order to deprive them from the landed property of her father. She has filed the complaint case with ulterior motive. The full brother and his family members are not expected to commit such unnatural offence with his own sister. The learned Magistrate has passed the order in mechanical way and so the same is fit to be



quashed. The learned APP, opposed the submissions.

5. On perusal of the complainant petition and the impugned order, I find that there is specific allegation that on the date of occurrence, all the petitioners assaulted the complainant, torn her clothes and committed unnatural offence. The complainant and her witness have supported the said fact. The learned Magistrate finding prima facie case has rightly summoned the petitioners for the offences committed by them. The defence of false implication on account of land dispute and civil suit shall be considered at the time of trial. The Magistrate at the time of issuance of summons is not required to see the defence of other side. In this view of the matter, I do not find any merit in the submission of the learned counsel for the petitioners.

6. In view of the above facts, I do not find any merit in the quashing application. Accordingly, this Cr. Misc. application is dismissed.

(Sanjay Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	27.07.2017
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