

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.26950 of 2013

Arising Out of PS.Case No. -1258 Year- 2012 Thana -PATNA COMPLAINT CASE District- PATNA

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1. Deo Narayan Sao Son of Ganga Sao Resident of Dariyapur, P.S- Naubatpur,
District- Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. Pokhan Sao Son Of Chetan Sao Resident Of Village Dariyapur Chainpura, P.S-
Naubatpur, District- Patna

.... Opposite Party/s

With

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Criminal Miscellaneous No. 25184 of 2013

Arising Out of PS.Case No. -1258 Year- 2012 Thana -PATNA COMPLAINT CASE District- PATNA

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1. Ganga Sao S/O Late Sobhan Sao Resident Of Dariyapur, P.S.- Naubatpur,
District- Patna
2. Shankar Sao S/O Ganga Sal Resident Of Dariyapur, P.S.- Naubatpur, District-
Patna
3. Suresh Sao S/O Late Raghuni Sao Resident Of Dariyapur, P.S.- Naubatpur,
District- Patna
4. Ranga Sao S/O Late Sobhan Sao Resident Of Village- Patut, P.S.- Bikram,
District- Patna
5. Sheo Narayan Sao S/O Ranga Sao Resident Of Village- Patut, P.S.- Bikram,
District- Patna
6. Sunil Kumar Sao @ Sunil Sao
7. Anil Sao, Both are sons of Chandu Sao, resident of Viollage- Nagwan, P.S.-
Naubatpur, District- Patna
8. Janki Sao
9. Badri Sao
10. Durga Sao
11. Madan Sao, All are sons of Haricharan Sao
12. Gauri Sao
13. Toontun Sao @ Tunnu Sao sons of Janki Sao
14. Lallan Sao son of Durga Sao, All are resident of Village- Deora, P.S.-
Naubatpur, District- Patna
15. Om Prakash Sao
16. Santosh Sao
17. Ramu Sao
18. Shankar Sao sons of Mahabir Sao.
All are resident of Village- Simri, P.S.- Bihta, District- Patna.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Pokhan Sao, son of Chetan Sao, resident of Village- Dariyapur Chainpura, P.S.-
Naubatpur, District- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dharendra Kumar Roy, Adv.
For the State : Mr. Nityanand, APP



For Opposite Party No.2 : Mr. Pramod Kumar Bhartiya, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 03-04-2017

These two application under Section 482 of the Code of Criminal Procedure (for short “Cr.P.C.’) have been filed challenging the order dated 15th March, 2013 passed by the learned Judicial Magistrate 1st Class, Danapur, Patna in Complaint Case No. 1258(C) of 2012 whereby, finding a prima facie case to be made out for the offences under Sections 323 and 379 of the Indian Penal Code, cognizance has been taken and summons have been issued against the petitioners of both the cases and one more accused named in the complaint petition.

2. According to the complainant, on 4th November, 2012 at about 5.00 p.m. while the complainant was supervising the construction work of his house, the petitioners and 15-20 unknown persons came there and on the point of pistol they took out money from the pocket of the complainant. They also assaulted him causing injury on his person. They damaged the property and took away 80 bags of cement, iron rod and other articles. The complainant further alleged that due to the injuries caused on his person, he was taken to a doctor for treatment. He had severe bodyache and the doctor provided him medical treatment.

3. It is submitted by the learned counsel for the petitioners



that the entire case of the complainant is false and concocted. He submitted that there are several inconsistencies and contradictions in the statement of the witnesses examined in course of inquiry. Even the doctor, who is alleged to have treated the complainant, was not examined and no medical report in support of any treatment given to the complainant was filed before the Magistrate during inquiry.

4. On the other hand, learned counsel for the opposite party no.2 submitted that there is no error in the order passed by the learned Magistrate. He submitted that the complainant Pokhan Sao and the two inquiry witnesses, namely, Yugal Kishore Sao and Arjun Sao have fully supported the case of the complainant. He submitted that non-production of medical evidence or non-examination of the doctor at the stage of inquiry would be of no consequence.

5. I have heard learned counsel for the parties and carefully perused the complaint petition, statement of the complainant on oath and the statements of the witnesses recorded in course of inquiry under Section 202 of the Cr.P.C.

6. On perusal of the aforesaid documents, I notice several inconsistencies, which are as under :-

(i) In the complaint petition, it is alleged that the occurrence took place at 5.00 p.m. on 4th November, 2012 whereas inquiry witness no.1 Yugal Kishore Sao in course of examination under Section 202 of the Cr.P.C. stated that the alleged occurrence



took place at 3.00 p.m.

(ii) It is alleged in the complaint petition that 80 bags of cement were taken away by the accused persons, whereas inquiry witness no.2 Arjun Sao submitted during inquiry that only 75 bags of cement were taken away.

(iii) In the complaint petition the complainant has alleged that Rs.15,000/- was taken out from his pocket by petitioner Deo Narayan Sao whereas in his statement on oath, he has stated that accused Shankar Sao took out the money from his pocket.

(iv) The complainant stated on oath that all the named and 15-20 unknown accused assaulted him whereas inquiry witness no.2 Arjun Sao stated that it was only the petitioner Deo Narayan Sao who assaulted the complainant with iron rod causing injury to the complainant.

7. Apart from the glaring inconsistencies noted above, I find that no medical evidence to corroborate the oral allegation of assault has been brought on record. Even the name of the doctor who is alleged to have treated the complainant has not been disclosed. Furthermore, the complainant has not only tried to suppress the factum of ongoing land dispute between the parties in his statement made on oath but has also tried to misled the learned Magistrate by answering the court's question that the accused persons are not his agnates whereas witness no.1 Yugal Kishore Sao in reply to court's



question clearly admitted that the accused persons are agnates of the complainant.

8. The need for proper application of mind by the courts at the stage of summoning has been highlighted by the Supreme Court in ***Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others [(1998) 5 SCC 749]***, in para 28 as follows:-

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

8. In view of the discrepancies noticed above and in view of the ratio laid down by the Supreme Court in ***Pepsi Foods Ltd*** (Supra), in the opinion of this Court, the learned Magistrate ought to have dismissed the complaint in exercise of its power conferred under Section 203 of the Cr.P.C. instead of summoning the accused



persons.

9. For the reasons, recorded hereinabove, I am of the opinion that the complaint in question is manifestly attended with malafide and allowing the same would amount abuse of the process of the Court.

10. Accordingly, the order dated 15th March, 2013 passed by the learned Judicial Magistrate 1st Class, Danapur, Patna in Complaint Case No. 1258(C) of 2012 is quashed. Consequently, the Complaint Case No. 1258(C) of 2012 itself stands quashed.

11. Both the applications stand allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	07-04-2017
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