

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.52087 of 2013

Arising Out of PS.Case No. -83 Year- 2013 Thana -DANAPUR District- PATNA

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1. Ishwari Gope @ Ishwari Prasad Yadav, Son of Late Sital Gope @ Sital Prasad Sinha R/o Village - Naya Tola, Saguna, P.S. Danapur, Distt. - Patna
 2. Jitendra Gope @ Jitendra Kumar, Son of Ishwari Prasad Yadav R/o Village - Naya Tola, Saguna, P.S. Danapur, Distt. - Patna
 3. Dharmendra Gope @ Surendra Kumar, Son of Ishwari Prasad Yadav R/o Village - Naya Tola, Saguna, P.S. Danapur, Distt. - Patna
 4. Laldei Devi, W/o Ishwari Prasad Yadav R/o Village - Naya Tola, Saguna, P.S. Danapur, Distt. – Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. Most. Rajmanti Devi, W/o Late Binod Kumar Yadav, R/o Vill. - Nehru Chak, Bari Patan Devi, P.S. Alamganj, District - Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sheojee Mishra
For the Opposite Party/s : Mr. Dilip Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
CAV JUDGMENT
Date: 08-12-2017

Heard learned counsel for the petitioners and learned
counsel for the opposite parties.

Petitioners, by means of this application under section
482 of the Code of Criminal Procedure, has invoked the inherent



jurisdiction of this Court with prayer to quash the order dated 25.09.2013, passed by the Additional Chief Judicial Magistrate, Danapur in connection with Danapur P.S. Case No. 83 of 2013, whereby cognizance under sections 341, 323, 354, 379 and 504/34 of the I.P.C. has been taken against the petitioners.

The facts of the case, in short, is that when the complainant had gone to visit the ancestral land, the accused persons came there started abusing and restrained the measurement. Thereafter, the petitioners assaulted her with fists and slaps. It is also alleged that her blouse was torn up and firing was also made. In that course, petitioners snatched golden chain and earrings. The Complaint Petition was filed on 31.01.2013 and sent under section 156(3) Cr. P.C. to lodge an F.I.R. in Danapur Police Station, where the case was instituted and accordingly, Danapur P.S. Case No. 83 of 2013 was registered.

Submission of learned counsel for the petitioners is that the entire allegation is false and fabricated, as alleged in the complaint petition. On perusal of complaint petition, it appears that the Complaint Petition is filed after lapse of 10 days of the alleged occurrence. Hence, it is quite clear that the same is filed after thought and charge sheet has already been submitted under section 504 of the I.P.C. The witnesses, examined in paragraph nos. 15, 16



and 17 of the case diary, have not supported the prosecution case. They have categorically denied the allegations, as made in the Complaint Petition. Investigating Officer also examined several witnesses in paragraph nos. 8 and 9, who also falsified the allegation of the complainant with regard to abuse, assault, snatching, tearing of sari and blouse of the complainant. Thus, no case is made out under section 504 of the I.P.C. On perusal of Annexure-3, it also appears that City Superintendent of Police (West) and Deputy Superintendent of Police have also found the case false stating that only altercation took place on the date of occurrence.

Having considered the above facts and circumstances of the case and the submission advanced by the learned counsel for the petitioners, it appears that learned Magistrate has not considered the materials available in the case diary as also the facts mentioned above. This Court finds that the impugned order dated 25.09.2013 passed by the Additional Chief Judicial Magistrate, Danapur in connection with Danapur P.S. Case No. 83 of 2013, whereby and whereunder the Magistrate has taken cognizance of the offence under sections 341, 323, 354, 379 and 504/34 of the I.P.C. is not sustainable in the eye of law. The same is, hereby, set aside and the matter is remanded back to the Court below for passing the order



afresh within a period of three months from today.

With the above direction and observation, this application is disposed of.

(Arvind Srivastava, J)

Shailendra/-

AFR/NAFR	NAFR
CAV DATE	08-12-2017
Uploading Date	11-12-2017
Transmission Date	11-12-2017

