

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.52088 of 2013

Arising Out of PS.Case No. -288 Year- 2012 Thana -SIWAN MUFFASIL District- SIWAN

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1. Om Prakash Gupta @ O.P.Gupta, son of Lok Nath Gupta, Director, M/S Logotech (India) Pvt. Ltd., at 403, F.I.E., Patparganj Industrial Ara, Delhi.
 2. Rupender Chabra @ Rupinder Chabra @ R. Chabra, son of N.D. Chabra Technical Director, M/S Logotech (India), Pvt. Ltd., House No. 909, Sector-4, Gurgaon, Haryana.

.... Petitioners.

Versus

1. The State of Bihar.
2. Om Prakash Singh, son of Pancha Nand Singh, Prachi Pathology Clinic, Gaushala Road, District – Siwan.

.... Opposite Parties.

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Appearance :

For the Petitioners	:	M/s. Krishna Prasad Singh, Senior Advocate, Bhaskar Shankar, Gopal Das and Krishna Behari Gupta, Advocates.
For the State	:	Mr. B.N. Pandey, A.P.P.
For the Opposite Party No.2	:	M/s. Jai Shankar Pathak and Bipin Bihari, Advocates.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
CAV JUDGMENT

Date: 16 -10-2017

This application, under Section 482 of the Code of Criminal Procedure, is directed against the order dated 10.09.2013 passed in Siwan (M) P.S. Case No.288 of 2012, whereunder the court of the Chief Judicial Magistrate, Siwan, took the cognizance of the offence under Sections 420, 406, 379, 448, 307, 427 and 506/34 of the Indian Penal Code against the accused-petitioners.

2. The facts, leading to this application, are that the opposite party no.2 Om Prakash Singh gave a written report on 05.08.2012 before



the Officer Incharge, Siwan (O.P. Mahadeva) Police Station to the effect that his wife Dr. Ira Sinha purchased Mayura-200 Machine through M/s. Logotech (India) Private Limited, 403 F.I.E. Patparganj, Delhi of which Om Prakash Gupta alias O.P. Gupta (petitioner no.1) is the Director and Rupender Chabra alias Rupinder Chabra alias R. Chabra (petitioner no.2) is the Technical Director. Dr. Ira Sinha, the wife of the opposite party no.2, used to deposit the comprehensive maintenance charge to the Said Firm yearly for maintenance of Mayura-200 Machine. Due to regular problems and non accuracy result of Myura-200 Machine, Dr. Ira Sinha, the wife of the opposite party no.2, contacted the manufacturer of Mayura-200 Machine, namely, M/s. Logotech Private Limited at Italy then the Company directed to M/s. Key Pharma Limited, A-1, Community Centre, Narayan Industrial Area, Phase-II, New Delhi, to look after and solve the problem of Mayura-200 Machine. Accordingly, on 17.04.2012, Engineer Prasoon came and checked Mayura-200 Machine and disclosed that the original parts have been removed from it and due to that reason, Mayura-200 Machine is not giving the accurate result. He also changed some duplicate parts fitted in the Machine, which were available with him and asked to inform the Company about fitting of duplicate parts in Mayura-200 Machine and also issued certificate in that regard. On knowing about the duplicate parts fitted in Mayura-200 Machine and about committing mischief by M/s. Logotech (India) Private Limited by exchanging the original parts of Myura-200 Machine, which was purchased on payment of Rs.11,00,000/-, the opposite party no.2 and his wife Dr. Ira Sinha was very



much shocked. Later on, on 19.04.2012, Engineer Prasoon talked to the opposite party no.2 on phone that O.P. Gupta (petitioner no.1) and R. Chabra (petitioner no.2), Director and Technical Director of M/s. Logotech (India) Private Limited respectively are annoyed with him and giving threatening asking him to take back the certificate of service and he also made request to return the certificate but the opposite party no.2 refused. Thereafter, on 20.04.2012, O.P. Gupta (petitioner no.1) and R. Chabra (petitioner no.2) talked to Dr. Ira Sinha, the wife of the opposite party no.2, on phone and started giving pressure to return the certificate of service of the Machine disclosing fitting of the duplicate parts but she refused. On 05.08.2012, in the evening, R. Chabra (petitioner no.2) alongwith one another person entered in the clinic of the opposite party no.2 and introduced that person as O.P. Gupta (petitioner no.1), the Director of M/s. Logotech (India) Private Limited. At that time, four persons were also with them. R. Chabra (petitioner no.2) allured to opposite party no.2 with several modes to return the certificate as issued by Engineer Prasoon, saying that unless and until certificate is returned, his distributorship will be cancelled by the Company. When the opposite party no.2 refused to return the certificate then both became annoyed and started to abuse. On protest made by the opposite party no.2, R. Chabra (petitioner no.2) ordered to his associates, who were armed with pistol to kill him. Thereafter, one person, pointed the pistol at the neck of the opposite party no.2 and fired but the same was missed. On raising 'hullah' by the opposite party no.2, the neighbours rushed there and, thereafter, both the petitioners moved from



there carrying the briefcase of the opposite party no.2 containing laptop, cash Rs.20,000/- and other documents boarding on the Scorpio vehicle. As such, the accused-petitioners committed mischief with Dr. Ira Sinha, the wife of the opposite party no.2, by replacing the duplicate parts in mayura-200 Machine by removing the original parts.

3. On the basis of the aforesaid written report of the opposite party no.2, Siwan (M) P.S. Case No.288 of 2012 under Sections 420, 406, 379, 448, 307, 427 and 506/34 of the Indian Penal Code was instituted on 05.08.2012 against the accused-petitioners and, on investigation, the police submitted the chargesheet against them under the aforesaid Sections. Thereafter, the Chief Judicial Magistrate, Siwan, took the cognizance of the offence under Sections 420, 406, 379, 448, 307, 427 and 506/34 of the Indian Penal Code against the accused-petitioners through the impugned order dated 10.09.2013.

4. Learned counsel for the petitioners submitted that, admittedly, the petitioners are Director and Technical Director of M/s. Logotech (India) Private Limited respectively having its registered office at 403, F.I.E., Patparganj, New Delhi, and are engaged in sale and purchase of electronic equipments of M/s. Logotech Private Limited situated at Italy. The opposite party no.2 Om Prakash Singh and his wife Dr. Ira Sinha are doctors and running the clinic at Gaushala Road, Siwan. Dr. Ira Sinha in the month of May, 2006 offered to purchase fully automatic Biochemistry Analyser Model Echo Plus Machine and, thereafter, the representative of the accused-petitioners visited the clinic of Dr. Ira Sinha, the wife of the



opposite party no.2, and entered into an agreement and, accordingly, on 30.05.2006, Dr. Ira Sinha purchased fully automatic Biochemistry Analyser Model Echo Plus Machine. According to the terms of the agreement, the Echo Plus Machine was being maintained by the Company of the petitioners till 12.10.2007. The employees of Dr. Ira Sinha, the wife of the opposite party no.2, were not well versed in handling the machine, then on the request of Dr. Ira Sinha, new model of the aforesaid Machine in the name of Mayura-200 was supplied to her in terms of the agreement dated 23.07.2007 and the same was installed in the clinic of Dr. Ira Sinha, the wife of the opposite party no.2, and the machine was working in the proper condition. After seven months, Dr. Ira Sinha, the wife of the opposite party no.2, informed the Company of the petitioners about some problem in Mayura-200 Machine. Thereafter, one engineer was sent by the Company of the petitioners at the clinic of Dr. Ira Sinha, the wife of the opposite party no.2, and then it was detected that tube of the machine was damaged by the rat and the same was replaced by the engineer with a warning that if in future any part would be damaged, the Company will charge the price of the part on which Dr. Ira Sinha, the wife of the opposite party no.2, became annoyed and made complaint to the petitioners' Company and also lodged Siwan(Mufassil) P.S. Case No.61 of 2008 against Faiz Ahmad, Director Marketing, I.A. Hashmi, Sales Executive and R. Chhabra (petitioner no.2), Technical Director, of M/s. Logotech (India) Private Limited with false allegation in which on investigation, the police submitted the chargesheet. Thereafter, the Chief Judicial Magistrate, Siwan, took the cognizance of the



offence under Sections 406, 420, 384 and 386/34 of the Indian Penal Code vide order dated 29.08.2008 against them. Against the aforesaid order of taking cognizance of the offence, Faiz Ahmad, Director Marketing, I.A. Hashmi, Sales Executive and R. Chhabra (petitioner no.2), Technical Director, of M/s. Logotech (India) Private Limited, filed Criminal Misc. No.36923 of 2008 under Section 482 of the Code of Criminal Procedure, and the aforesaid cognizance order was quashed by this Court vide order dated 16.11.2011. Thereafter, with an ulterior motive to put undue pressure and in vengeance, the opposite party no.2, the husband of Dr. Ira Sinha, lodged the present Siwan (Mufassil) P.S. Case No.288 of 2012 against the petitioners on 05.08.2012 under Sections 420, 406, 379, 448, 307, 427 and 506/34 of the Indian Penal Code with respect to the same Mayura-200 Machine in which the cognizance of the offence is taken against the petitioners through the impugned order dated 10.09.2013. It is further submitted that since the petitioner no.2 R. Chhabra, Faiz Ahmad and I.A. Hashmi were made accused in Siwan (Mufassil) P.S. Case No.61 of 2008 lodged by Ira Sinha, the wife of the opposite party no.2, in the year 2008 and the order of taking cognizance of the offence against them was assailed before this Court by filing Criminal Misc. No.36923 of 2008, which was quashed on 16.11.2011, therefore, no question arises about doing the maintenance work of the Mayura-200 Machine by the Engineer of the petitioners after lodging of Siwan (M) P.S. Case No.61 of 2008. In fact, after quashing the cognizance order dated 29.08.2008 passed in Siwan(M) P.S. Case No.61 of 2008 by this Court, the present case has been



lodged by the opposite party no.2 making false allegation of coming the petitioners at his clinic, giving threatening to return the certificate issued by Engineer Prasoon about fitting of duplicate part in Mayura-200 Machine and pointing the pistol upon the opposite party no.2 and moving from there with the briefcase.

5. Learned counsel for the opposite party no.2 submitted that there is no illegality in the impugned order. He further submitted that in the present case, both the petitioners alongwith some unknown having pistol came at the clinic of the opposite party no.2 and his wife Ira Sinha and gave threatening to return the certificate issued by Engineer Prasoon about fitting of duplicate part in Mayura-200 Machine and when the opposite party no.2 refused to return the certificate, then both the petitioners abused him on the point of pistol and also made firing but the same was missed and they also took his briefcase containing laptop, cash Rs.20,000/- and other documents and moved from there boarding on the Scorpio vehicle but he fairly conceded that regarding misbehaviour of Engineer of the petitioners' company in the maintenance of same Mayura-200 Machine, Dr. Ira Sinha, the wife of the opposite party no.2, had lodged Siwan (Mufassil) P.S. Case No.61 of 2008 in which the cognizance of the offence was taken under Sections 406, 420, 384 and 386/34 of the Indian Penal Code by the Chief Judicial Magistrate, Siwan, vide order dated 29.08.2008 but the said order was quashed by this Court vide order dated 16.11.2011 passed in Criminal Misc. No.36923 of 2008.

6. Admittedly, regarding non attending the problem of same



Mayura-200 Machine, claimed by Ira Sinha, the wife of the opposite party no.2 had lodged Siwan (Mufassil) P.S. Case No.61 of 2008 in which Faiz Ahmad, Director Marketing, I.A. Hashmi, Sales Executive and R. Chhabra (petitioner no.2), Technical Director, of M/s. Logotech (India) Private Limited, were made accused. In the aforesaid case, the cognizance of the offence under Sections 406, 420, 384 and 386/34 of the Indian Penal Code was taken against them vide order dated 29.08.2008 by the Chief Judicial Magistrate, Siwan. Thereafter, against the aforesaid cognizance order dated 29.08.2008, Faiz Ahmad, Director Marketing, I.A. Hashmi, Sales Executive and R. Chhabra (petitioner no.2), Technical Director, of M/s. Logotech (India) Private Limited, filed Criminal Misc. No.36923 of 2008 before this Court which was quashed vide order dated 16.11.2011. As such, on making complaint by Dr. Ira Sinha, the wife of the opposite party no.2, about non functioning of Mayura-200 Machine properly, and sending the Engineer by the petitioners for repairing of Mayura-200 Machine after lodging of Siwan (M) P.S. Case No.61 of 2008 is quite unreasonable. The further allegation against the petitioners that they being the Director and Technical Director of M/s. Logotech (India) Private Limited, Delhi, came from Delhi with some antisocial elements at the clinic of the opposite party no.2 at Siwan and abused and gave threatening to the opposite party no.2 appears to be unreasonable and not believable. As such, Siwan (M) P.S. Case No.288 of 2012 appears to be lodged by the opposite party no.2 against the petitioners with an ulterior motive to put undue pressure in vengeance.



7. Having regard to the facts and circumstances of the case, the continuance of the criminal proceedings on passing the impugned order dated 10.09.2013 in Siwan (Muffasil) P.S. Case No.288 of 2012 by the court of the Chief Judicial Magistrate, Siwan, for the offence under Sections 420, 406, 379, 448, 307, 427 and 506/34 of the Indian Penal Code against the accused-petitioners would amount to an abuse of the process of the court.

8. Accordingly, the impugned order dated 10.09.2013 passed in Siwan (M) P.S. Case No.288 of 2012 by the court of the Chief Judicial Magistrate, Siwan, and the entire criminal proceedings of the aforesaid case, are hereby quashed and this application is allowed.

(Rajendra Kumar Mishra, J)

P.S./-

AFR/NAFR	NAFR
CAV DATE	24.08.2017
Uploading Date	16.10.2017.
Transmission Date	16.10.2017.

