

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.23528 of 2014

Arising Out of PS.Case No. -2738 Year- 2012 Thana -PATNA COMPLAINT CASE District-
PATNA

- =====
1. Mahendra Sao @ Mahendra Sah
 2. Awadhesh Sah @ Ram Awadh Sah,
Both are sons of Shree Basgit Sah and residents of Village- Ruiya, P.O. Darauli,
P.S. Bhabua, District- Kaimur, at present residing at Ward No.9, Chawani
Mohalla, P.O. & p.s. Bhabua, District Kaimur at Bhabua.

.... Petitioner/s

Versus

1. State of Bihar
2. Santosh Kumar, son of Late Shree Shyam Kishore, resident of Flat No.B/204,
Ambika Nandan Apartment, behind Dr. B. Bhattacharya, near HDFC Bank
ATM, West Patel Nagar, P.S. Shastri Nagar, District Patna.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Anjani Kumar Sinha No.1, Adv.

For the Opposite Party No.2 : Mr. Raj Kishore Prasad, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 02-08-2017

The present case arises out of a complaint dated 25.09.2012 bearing Complaint Case No. 2738 of 2012 filed by one Santosh Kumar before the learned court of Chief Judicial Magistrate, Patna, inter alia, alleging therein that the accused persons had promised for admission of the son of the complainant in the Engineering course for which they had demanded a sum of Rs. 7,00,000/-. Consequently, the complainant is said to have given a sum of Rs. 1,90,000/- in cash. Thereafter, the complainant is said to have given a cheque of Rs. 5.00,000/- on 25.08.2012. Subsequently, the complainant had given a sum of Rs. 5 lacs in cash to the accused



persons, however, when his son was not admitted in the Engineering course, he had demanded refund of the said sum of Rs. 6,90,000/- from the accused persons, however, the same was not refunded. It has been further alleged that the accused persons had called the complainant on 23.09.2012 in a temple at Bailey Road, Patna, where the accused persons and others had abused him and threatened him that they would murder the son of the complainant in case the accused persons ever demanded refund of money and had also snatched gold chain from the neck of the complainant.

2. The learned court of Judicial Magistrate, 1st Class, Patna, by an order dated 16.04.2013 has not found sufficient material to take cognizance under Sections 384, 406, 420, 504 and 120B/34 of the Indian Penal Code, however, he has found enough material to proceed under Sections 418, 323 and 379 of the Indian Penal Code and has consequently, summoned the accused persons.

3. Another aspect of the case is that one of the accused of the aforesaid complaint case, filed by the complainant- Opposite Party No.2 herein, has filed a Complaint Case bearing Complaint Case No. 1127 of 2012 before the learned court of Chief Judicial Magistrate, Kaimur (Bhabua) against the complainant of the aforesaid case, inter alia, alleging therein that the Opposite Party No.2 herein had asked for a sum of Rs.8,00,000/- from the petitioner no.1 herein for the



purposes of purchasing land at Patna. Thereafter, the Opposite Party No.2 herein had given a cheque of Rs. 5,00,000/-, which was deposited by the petitioner no.1 in his account on 04.09.2012, but the same was dishonoured on account of their being insufficient funds in the account of the Opposite Party No.2 herein. The petitioner no.1 herein is said to have asked for refund of the amount, but the Opposite Party No.2 herein has refused to return the money. It is also submitted that in the said complaint Case No. 1127 of 2012, cognizance has been taken by the learned trial court on 01.02.2013.

4. It may be relevant to note that the order of the learned trial court dated 01.02.2013, passed in the aforesaid Complaint Case No. 1127 of 2012 was sought to be challenged before this Court in Cr. Misc. No. 12693 of 2013 at the behest of the aforesaid Opposite Party No.2 herein, however, the same was dismissed by this Court by an order dated 09.07.2015. It appears that the Opposite Party No.2 has assailed the said order dated 09.07.2015 passed by this Court in Cr. Misc. No. 12693 of 2013 before the Hon'ble Apex Court and the Hon'ble Apex Court by an order dated 11.09.2015 passed in Special Leave to Appeal (Cri.) No. 7330 of 2015, has been pleased to issue notice and stay the further proceedings of Complaint Case No. 1127 of 2012. The said Special Leave to Appeal (Cri) No. 7330 of 2015 appears to be still pending.



5. The learned counsel for the petitioners submits that the loan, in fact, was taken by the opposite party no.2 from the petitioners and upon demand being made, a cheque of Rs. 5,00,000/- was handed over to the petitioner no.1, however, the same had been returned by the Bank on account of insufficient fund in the account of the Opposite Party no.2. The learned counsel for the petitioners has stated that the point to note is that whereas the aforesaid cheque of Rs. 5,00,000/- was returned back by the Bank on account of insufficient funds in the account of Opposite Party No.2, the Opposite Party no.2 in the aforesaid complaint has stated otherwise to the effect that he had given instructions to the Bank to “stop payment”.

6. The learned counsel for the petitioners has further submitted that the present prosecution has been launched in order to save skin and avoid refund of the money taken from the petitioner no.1 and that too only after the petitioner no.1 had sent a legal notice to the Opposite party no.2 on 11.09.2012. It is further submitted that only to make the offence cognizable under Section 379 of the I.P.C., a story regarding snatching of golden chain has been developed by the Opposite Party No.2 and, in fact, no such incident had taken place, which is apparent from the fact that no evidence has been adduced by the Opposite party no.2 to substantiate his allegations much less any proof regarding giving cash to the petitioners.



7. The learned counsel for the petitioners has relied on the judgments reported in *AIR 1992 SC 604* [**State of Haryana vs. Bhajan Lal**], *2009(1) BCCR 98 Pat* [**Kapildeo Rai vs. State of Bihar and Anr.**], *2017(1) PLJR 615 (HC)* [**Vijay L. Sonawane and others vs. The State of Bihar and others**] and *2017(3) PLJR 152 (HC)* [**Ashutosh Mishra @ Chhote vs. The State of Bihar and Anr.**].

8. Per contra, the learned counsel for the Opposite Party No.2 has submitted that a bare perusal of the complaint petition would show that prima facie case is made out against the petitioners herein. It is further submitted that the prosecution launched by the petitioner no.1 i.e. the Complaint Case No. 1127 of 2012 has been stayed by the Hon'ble Apex Court.

9. At this juncture, it would be appropriate to deal with the cases cited by the learned counsel for the petitioners. The first case, i.e., **State of Haryana vs. Bhajan Lal** (supra) was authority on the issue as to when the High Court should exercise its inherent power under Section 482 Cr. P.C. and has laid down the category of cases where extraordinary power under Article 226/ 227 of Constitution of the India and Section 482 Cr. P.C. can be exercised by the High Court.

10. The second case i.e. the case of **Kapil Deo Rai vs.**



State of Bihar & Anr. (supra) pertains to the complaint being with regard to business transaction, in the nature of a civil litigation, for which no criminal liability would lie, hence, the complaint was quashed. The next case i.e. the case of **Vijay L. Sonawane and others vs. The State of Bihar and ors.**(supra), is a 'treatise' on the settled law enunciated in scores of cases, especially in **Bhajan Lal** case (supra) by the Hon'ble Apex Court on the subject matter under consideration in the present case. The last case i.e. the case of **Ashutosh Mishra @ Chhote vs. The State of Bihar and another** (supra) pertains to the issue as to whether an unscrupulous litigant can knock at the door of law for redressal of his grievances upon an illegal act committed by him and this Court has answered the said issue and held that the complainant who had advanced money to ensure back door entry in a technical institute cannot get protection of law as well as cannot bring a suit for recovery of the said amount, as such cannot be allowed to bring a criminal litigation for redressal of his grievances.

11. Having regard to the facts and circumstances of the case, I find that there are two aspects of the complaint, one is with regard to the allegation pertaining to the petitioners having taken money from the Opposite Party No.2 on the pretext of admission of the son of the complainant in Engineering course and thereafter,



refusing to refund the same upon a demand being made by the Opposite Party No.2, upon the petitioners having failed to get his son admitted in Engineering course. The second aspect of the matter is with regard to the allegation of snatching of chain by the petitioner no.1 from the neck of the opposite party no.2, the petitioners abusing the complainant i.e. Opposite Party no.2 and threatening him with the murder of his son in case demand is made for refund of money by the complainant.

12. A bare perusal of the order dated 16.04.2013 passed by the learned Judicial Magistrate, Ist Class, Patna, shows that he has not found sufficient material to proceed against the petitioners herein for the offences punishable under Sections 384, 406, 420, 504, 120B/34 of the Indian Penal Code. The learned Judicial Magistrate, Ist Class, Patna has only found sufficient material to proceed against the petitioners herein for the offence punishable under Sections 418, 323 and 379 of the Indian Penal Code. The order of the learned Judicial Magistrate, Ist Class, Patna dated 16.04.2013 demonstrates that he has taken cognizance of the allegation pertaining to the second part i.e. the petitioners herein abusing the Opposite Party No.2 and threatening him with murder of his son as well as snatching of chain by the petitioner no.1 from the neck of the opposite party no.2.

13. From perusal of the materials on record as also the



submissions advanced by the learned counsel for the parties, I find that as far as the petitioner no.1 is concerned, there is specific allegation of him holding the collar of opposite party no.2, threatening him and snatching the golden chain from the neck of the opposite party no.2. However, as far as the petitioner no.2 is concerned, namely, Awadhesh Sah @ Ram Awadh Sah, there is no allegation of any overt act much less causing any hurt to the opposite party no.2 as well as there is no allegation of any commission of theft i.e. snatching of chain. Barring the second part of the allegation, the first part of the allegation is purely civil in nature and do not prima facie constitute any offence under the criminal law, hence, the learned Judicial Magistrate, Ist Class, Patna, has rightly refrained from issuing summon for the offences punishable under Sections 384, 406, 420, 504, 120B/34 of the Indian Penal Code.

14. I find that since upon a bare perusal of the complaint, no offence is made out against the petitioner no.2 for the offence punishable under Section 418, 323 and 379 of the Indian Penal Code, continuance of prosecution against petitioner no.2 would amount to an abuse of the process of the court.

15. For the reasons mentioned herein above, the application is allowed in part and the impugned order dated 16.04.2013, in so far as the petitioner no.2, namely, Awadhesh Sah is



concerned, is hereby quashed and consequently, the criminal prosecution emanating from Complaint Case No. 2738 of 2012 is also quashed as far as the petitioner no.2 is concerned.

16. It is made clear that the aforesaid Complaint Case No. 2738 of 2012 and the subsequent proceedings emanating therefrom will continue in so far as the petitioner no.1 is concerned.

17. It may be noted that this Court has not expressed any opinion on the merits of the case of the respective parties.

18. There shall be no order as to costs.

(Mohit Kumar Shah, J)

BTiwary/-

AFR/NAFR	NAFR
CAV DATE	26.07.2017
Uploading Date	02-08-2017
Transmission Date	02-08-2017

