

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.19844 of 2013

Arising Out of PS.Case No. -2621 Year- 2011 Thana -PATNA COMPLAINT CASE District- PATNA

- =====
1. Smt. Rekha Drollia W/O Sri Dinesh Drollia Resident Of Flat No. 601a, Shashi Palace, Kadam Kuan (Nala Road), P.S. Kadam Kuan, District Patna.
 2. Dinesh Kumar Drollia S/O Parmeshwar Lal Drollia Resident Of Flat No. 601a, Shashi Palace, Kadam Kuan (Nala Road), P.S. Kadam Kuan, District Patna.
 3. Sanjay Kumar Bohra S/O Bijay Kumar Bohra Resident Of Village Jhajha, P.S. Jhajha, District Jamui.
 4. Arun Banka S/O Late Rudra Chandra Banka Resident Of Village Jhajha, P.S. Jhajha, District Jamui.

.... Petitioners

Versus

1. The State Of Bihar.
2. Smt. Kalawati Devi W/O Sri Dineshwar Paswan Resident Of Road No. A, Rajendra Nagar, Patna-13, P.S. Kadam Kuan, District Patna.

.... Opposite Party

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Appearance :

For the Petitioners	:	Mr. Mahendra Thakur Mr. Sanjay Kumar
For the State	:	Mr. Ram Anurag Singh, APP
For O.P. No. 2	:	None

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 07-11-2017

Heard learned Counsel for the petitioners as well as the learned Counsel for the State. No one appears on behalf of Opposite party No. 2.

The petitioners seek quashing of the cognizance order dated 6.1.2012 passed by Shri Santosh Kumar Gupta, Judicial Magistrate, 1st Class, Patna in connection with Complaint Case No. 2621(C) of 2011, thereby taking cognizance of the offence under Sections 323 and 504 of the IPC.

The brief fact giving rise to the case is that the complainant Smt. Kalawati Devi (O.P. No. 2) filed a complaint alleging therein that she purchased a flat in Shashi Palace in Patna from M/s Aparna Housing Construction Private Limited in the year 1996 and one of the accused



namely Ram Das Sahu, who was engaged in the business of purchase and sale of old cars developed relationship with her husband and was on visiting terms. The complainant was in need of a caretaker for her apartment so Ram Das Sahu introduced Md. Reyaz Maqbool to whom she executed a registered Power of Attorney to look after the flat. A bank loan was also obtained by the accused persons by getting a blank form signed by the complainant by Ram Das Sahu and Reyaz Maqbool, being the Power of Attorney holder, executed a sale deed in favour of Smt. Rekha Drollia and others became the witness of the deed. But the consideration amount was not paid to the complainant so in the sale deed they shown that the consideration money was paid by cheque and cash. The complainant was not knowing that any loan was obtained from the bank but when she received a notice from the Debt Recovery Tribunal in a proceeding under the Sarfaesi Act in the year 2011. Then she went to the accused persons to make query about the fraud committed by them, then all the accused persons became violent and ready to assault and abused in filthy language.

Learned Counsel appearing on behalf of the petitioners submits that even if entire allegation levelled in the complaint is taken into entirety there is no any allegation of assault committed by the accused persons. In the statement the complainant this not stated that the accused persons abused her, so prima facie no ingredient of Sections 323 as well as Section 504 of the IPC is made out.

No one appears on behalf of Opposite party No. 2, but the learned Counsel for the State concedes that there is no any statement of the complainant in the complaint that that she was abused or assaulted by



the accused persons.

Having considered the rival submissions and on perusal of the record the Court finds that prima facie the ingredients of the offence under Sections 323 and 504 is missing in the complaint or in the statement of the complainant at the enquiry stage. There is no any specific allegation that the accused persons assaulted the complainant. Unless the accused voluntarily causes hurt no offence is attracted under Section 323 IPC. There is no whisper in her statement recorded under Section 200 of the Code of Criminal Procedure that she was abused by the accused persons or any word of abuse is referred therein. So, finding no ingredients of these two offences being made out on considering entire allegation made in the complaint even taken into entirety, so continuance of the criminal proceeding against the petitioners would be abuse of the process of the Court. Hence, entire criminal proceeding of Complaint Case No. 2621(C) of 2011 inclusive of the cognizance order dated 6.1.2012 pending in the Court of Shri Santosh Kumar Gupta, Judicial Magistrate, 1st Class, Patna is hereby quashed.

The application stands allowed.

Snkumar/-

(Arun Kumar, J.)

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	09.11.2017
Transmission Date	09.11.2017

