

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.42916 of 2013

Arising out of P.S. Case No.1400 Year 2010 Thana BHOJPUR COMPLAINT CASE District
BHOJPUR

- =====
1. Ajai Kumar Gupta @ Muntun @ Muntun Kumar Gupta Son of Hiralal Gupta Resident of Mohalla- M.P.Bagh, P.O.-Ara, P.S.- Ara Town, District- Bhojpur (Ara)
 2. Rajesh Kumar Gupta Son of Hiralal Gupta Resident of Mohalla- M.P.Bagh, P.O.-Ara, P.S.- Ara Town, District- Bhojpur (Ara)
 3. Rakesh Kumar Gupta Son of Hiralal Gupta Resident of Mohalla- M.P.Bagh, P.O.-Ara, P.S.- Ara Town, District- Bhojpur (Ara)
 4. Sanjiv Kumar Gupta @ Guddu @ Guddu Kumar Gupta Son of Hiralal Gupta Resident of Mohalla- M.P.Bagh, P.O.-Ara, P.S.- Ara Town, District- Bhojpur (Ara)
 5. Rajiv Kumar Gupta @ Santu Kumar Gupta @ Santu Son of Hiralal Gupta Resident of Mohalla- M.P.Bagh, P.O.-Ara, P.S.- Ara Town, District- Bhojpur (Ara)
 6. Sanjai Kumar Gupta Son of Hiralal Gupta Resident of Mohalla- M.P.Bagh, P.O.-Ara, P.S.- Ara Town, District- Bhojpur (Ara)
 7. Hiralal Gupta @ Hiralal S/o Late Basawanlal Resident of Mohalla- M.P.Bagh, P.O.-Ara, P.S.- Ara Town, District- Bhojpur (Ara)

.... Petitioners

Versus

1. The State of Bihar
2. Awadesh Kumar S/o Late Bharat Prasad Resident of Mohalla- Chitratoli, P.O.- Ara, P.S.- Ara Town, District- Bhojpur At Ara

.... Opposite Parties

=====

Appearance :

For the Petitioners	:	Mr. Sheo Jee Mishra, Advocate
For the State	:	Mr. Dashrath Mehta, APP
For O.P. No.2	:	Mr. Raghwendra Pratap Singh, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

Date: 18-09-2017

Heard learned counsel for the petitioners, learned counsel
for the opposite party no.2 as well as learned Additional Public
Prosecutor appearing for the State.

2. This application under Section 482 Cr.P.C. is directed
against the order dated 17.08.2013, passed in Complaint Case
No.1400C of 2010 Trial No.5214 of 2013, whereunder the Judicial



Magistrate, 1st Class, Ara summoned the accused-petitioners, on enquiry, under Section 204 Cr.P.C. finding *prima facie* case under Sections 147, 341 and 323 of the Indian Penal Code.

3. The fact leading to this application is that Awadhesh Kumar, opposite party no.2, filed Complaint Case No.1400C of 2010 with contention that his marriage was performed with Punam Devi, daughter of petitioner no.7, Hiralal Gupta @ Hiralal and due to their wedlock, there are four daughters and one son. After marriage, his wife Punam Devi came at his house and his in-laws used to visit his house. On 09.07.2010 all accused-petitioners having stick and iron rod came at his house and started to abuse. When he made protest then petitioner no.7, Hiralal Gupta @ Hiralal instigated other petitioners to kill and to accompany Punam Devi along her children. Thereafter petitioner no.1, Ajay Kumar Gupta @ Muntun @ Muntun Kumar Gupta and petitioner no.6, Sanjay Kumar Gupta caused injury to him. When his brother rushed to save him then petitioner no.2, Rajesh Kumar Gupta, petitioner no.3, Rakesh Kumar Gupta and petitioner no.4, Sanjiv Kumar Gupta @ Guddu @ Guddu Kumar Gupta caused injury through iron rod and stick to his brother also. In that course petitioner no.5, Rajiv Kumar Gupta @ Santu Kumar Gupta @ Santu snatched a golden chain worth Rs.27,000/- to his neck and petitioner no.6, Sanjay Kumar Gupta also caused injury by fists and



slaps to him and his brother also. Thereafter all petitioners entered in his house and accompanied his wife, Punam Devi along with children with two attaché and three bags containing gold and silver ornaments and clothes. On his alarm the *mohalla* people gathered and saw the occurrence and pacified the matter. Thereafter all accused-petitioners fled away from there. Further allegation of opposite party no.2 is that his brother was treated at Sadar Hospital, Ara. Thereafter opposite party no.2 along with his brother went to Ara Town police station but the Officer-in-Charge of the said police station refused to lodge the case with advise to file a complaint case.

4. Learned counsel appearing on behalf of the petitioners submits that in fact petitioner nos.1 to 6 are brother-in-law and petitioner no.7 is father-in-law of the complainant/opposite party no.2. When Punam Devi, the sister of petitioner nos.1 to 6 and daughter of petitioner no.7, gave information on phone about her torture made at the hands of her husband then on 09.07.2010, petitioner no.3, Rakesh Kumar Gupta and petitioner no.6, Sanjay Kumar Gupta went at the house of his brother-in-law, opposite party no.2 to know where about of their sister, Punam Devi then Awadhesh Kumar Gupta started to assault petitioner nos.3 and 6 with *bari*, a piece of wood, causing injury on head and wrist regarding which Ara (T) P.S. Case No.297 of 2010 was instituted under Sections 341/323/504/498A/34 of the



Indian Penal Code on 09.07.2010 against the complainant/opposite party no.2 and his other family members in which on investigation the police submitted charge-sheet and later complainant/opposite party no.2, Awadesh Kumar, his brother Arun Kumar Gupta, Vinay Kumar Gupta and sister-in-law Renu Devi have been convicted under Sections 498A/34 and 323/34 of the Indian Penal Code and sentenced to undergo simple imprisonment for six months vide judgment and order dated 25.11.2015, passed in G.R. No.3373 of 2010, Trial No.1026 of 2011 by the court of Judicial Magistrate-IIIrd, Civil Court, Bhojpur at Ara. Due to lodging of Ara (T) P.S. Case No.297 of 2010 on 09.07.2010 by the petitioner Sanjay Kumar Gupta against the complainant/opposite party no.2 and his family members, the complainant/opposite party no.2 lodged Complaint Case No.1400C of 2010 on 12.07.2010 after three days of the alleged occurrence in counter blast of the case lodged by petitioner no.6, Sanjay Kumar Gupta only to put undue pressure.

5. On the other hand, learned counsel appearing on behalf of complainant/opposite party no.2 submits that there is no illegality in the impugned order summoning the accused-petitioners under Section 304 Cr.P.C. finding *prima facie* case under Sections 147, 341 and 323 of the Indian Penal Code but has not denied about lodging of the Ara (T) P.S. Case No.297 of 2010 on 09.07.2010 under Sections



341, 323, 504, 498(A)/34 of the Indian Penal Code on the basis of the written report of petitioner no.6, Sanjay Kumar Gupta in which they have been convicted and sentenced through the judgment and order dated 25.11.2015, passed in G.R. No.3373 of 2010, Trial No.1026 of 2011 by the court of Judicial Magistrate-III, Civil Court, Bhojpur at Ara.

6. Admittedly petitioners are brothers-in-laws and father-in-law of the complainant/opposite party no.2. Petitioner no.6 had lodged Ara (T) P.S. Case No.297 of 2010 on 09.07.2010 under Sections 341, 323, 504, 498(A)/34 of the Indian Penal Code in which the complainant/opposite party no.2, his two brothers and sister-in-law and they have been convicted and sentenced vide judgment and order dated 25.11.2015, passed in G.R. No.3373 of 2010, Trial No.1026 of 2011 by the court of Judicial Magistrate-III, Civil Court, Bhojpur at Ara. As such Complaint Case No.1400C of 2010 filed by opposite party no.2 appears to be malicious in counter blast of Ara (T) P.S. Case No.297 of 2010 on 09.07.2010 filed against opposite party no.2 and his family members under Sections 341, 323, 504, 498(A)/34 of the Indian Penal Code regarding torturing to her sister and causing injury to him and his brother Rakesh Kumar Gupta, petitioner no.3. As such, permitting to continue the criminal proceeding in Complaint Case No.1400C of 2010 against the accused-petitioners on



summoning the petitioners under Section 204 Cr.P.C. through impugned order appears to be abuse of the process of the Court.

7. In the result, the impugned order dated 17.08.2013, passed in Complaint Case No.1400C of 2010 by learned Judicial Magistrate, 1st Class, Ara and the entire criminal proceeding is hereby quashed, this application is allowed.

(Rajendra Kumar Mishra, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.09.2017
Transmission Date	22.09.2017

