

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.45986 of 2013

Arising Out of Case No. 4930/2013, Complaint Case No. 1973 of 2012 (Enq. Case No. 185/2013)
District- EAST CHAMPARAN (MOTIHARI)

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1. Ram Sundar Mahto @ Shikari Mahto, S/O Late Banshi Mahto, Resident Of Village- Kalyanpur, P.S.- Kalyanpur, District- East Champaran
2. Saraswati Devi W/O Ram Sundar Mahto @ Shikari Mahto, Resident Of Village- Kalyanpur, P.S.- Kalyanpur, District- East Champaran
3. Suresh Mahto S/O Ram Sundar Mahto @ Shikari Mahto, Resident Of Village- Kalyanpur, P.S.- Kalyanpur, District- East Champaran
4. Ranvijay Mahto S/O Ram Sundar Mahto @ Shikari Mahto, Resident Of Village- Kalyanpur, P.S.- Kalyanpur, District- East Champaran

.... Petitioners

Versus

1. The State Of Bihar
2. Shanti Devi, W/O Late Sitaram Mahto, Village - Bangari Tola Dahaura, P.S.- Pipra, District- East Champaran.

.... Opposite Parties.

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Appearance:

For the Petitioner/s : Mr. Ansul, Advocate.

For the Opposite Party No.2: Mr. Kamlesh Kumar Sharma and
Mr. Rakesh Kumar No. 1, Advocates.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

CAV JUDGMENT

Date: 26-07-2017

The petitioners in the present case are seeking quashing of the order dated 13.08.2013 arising out of Complaint Case No. 1973 of 2012 (Enq. Case No. 185/2013) by which the learned Magistrate has taken cognizance of offences under Sections 323, 379, 406 and 420 of the Indian Penal Code and issued summons to the accused petitioners.

2. The complainant-opposite party no. 2 lodged a complaint case in the court of the learned Chief Judicial Magistrate, East Champaran at Motihari; a copy of the complaint petition is



available on the record as Annexure-1. The complainant alleged that her husband, after retirement from service of Indian Navy, purchased a piece of land out of his earnings and post retrieval dues and thereafter constructed a residential house and also some shops. It is stated that the husband of the complainant had taken some loan also for running the shops and he was making payment of installments against loan out of the pensionary benefits which he was receiving. The complainant further alleged that her husband had placed his elder brother Ram Sundar Mahto @ Shikari Mahto in a cloth shop opened for him, the other brothers were also running their shop and there was no difficulty from them but the allegation is that from the cloth shop in which the husband of the complainant had invested the capital, during the life time of her husband, some payments were being made after accounting of the profits but after death of her husband, the intention of said Ram Sundar Mahto @ Shikari Mahto changed and he started misleading the complainant with dishonest intention. It is alleged that Shikari Mahto induced the complainant to give a sum of rupees one lac for purpose of getting employment of her son on compassionate ground, he also obtained signature of the complainant on a blank sheet of paper in the name of her being the guardian. It is further alleged that signature of her son Ram Tapsya was also obtained on a paper but he was not given any job. It is alleged that when the complainant



was demanding back her money, all the accused persons were threatening her to kill her only son. She further alleged that on 15.07.2012 the complainant was ousted from her house situated in Kalyanpur but because of her weaknesses the complainant could not take any action. Again on 24.07.2012 at 8:00 A.M. when she went to demand her money, she was abused and Shikari Mahto caught hold of her by her hair and started dragging her out of her village, the complainant in the process got naked. It is alleged that the accused persons Suresh and Saraswati Devi gave her 3-4 slaps and took away one golden chain of 10 grams and cash of Rs. 30,000/-. Shikari Mahto further told her that she had already been ousted from Kalyanpur and she would not even be allowed to stay in this house. On these allegations, the complainant filed the complaint, made her statement on oath in which she reiterated her case.

3. From the order taking cognizance it appears that the learned Magistrate enquired into the complaint in terms of Section 202 of the Code of Criminal Procedure and the complainant produced as many as three witnesses. The depositions of enquiry witnesses were not attached with the Criminal Miscellaneous application filed on 28.10.2013, therefore, when the matter was taken up for disposal, this Court pointed out to the learned counsel for the petitioners that the depositions of the enquiry witnesses are very important documents



which formed basis of the order taking cognizance, therefore, those documents should be brought on the record. Learned counsel for the petitioners prayed for time and on oral prayer the matter was passed over at least on two successive dates giving more than a fortnight. On 19.07.2017, once again when the matter was called out it was found that the depositions of the enquiry witnesses were not brought on the record. Learned counsel for the petitioners informed the Court that it is not possible for him to obtain certified copies of the statements of the enquiry witnesses because the record of the complaint case is not traceable in the court below and, at the same time, the learned counsel requested this Court to proceed with the matter for final hearing on the basis of the materials whatsoever available on the record. Accordingly, after recording the submissions of learned counsel the matter was heard.

4. Learned counsel for the petitioners submitted that the allegations made in the complaint petition are at best in the nature of civil dispute. He has referred some documents such as copies of the schedule of properties, letter appointing Panches, copies of the sale deeds dated 25.09.2008 and 15.11.2008, copies of the allotment letters of the petitioners and the complainant and copy of the plaint of Title Suit No. 242/2012 filed in the court of the learned Sub Judge I, Motihari by Ram Sundar Mahto @ Shikari Mahto in which the



complainant is the defendant no. 5. In the said suit, the plaintiff has claimed the relief that the land mentioned in Schedule I of the Plaint be declared in favour of the plaintiff which he got in partition and is coming in peaceful possession. The plaintiff has claimed confirmation of possession over Schedule I land. According to learned counsel, this Court can rely upon those documents which are annexed with the petition.

5. In support of his contention the learned counsel for the petitioners relied upon the following judgments:-

- (i) **Rajiv Thapar & Ors. Vs. Madan Lal Kapoor**, reported in (2013) 3 SCC 330.
- (ii) **Harshendra Kumar D. Vs. Rebatilata Koley etc.**, reported in AIR 2011 SC 1090.
- (iii) **Indian Oil Corporation Vs. NEPC India Ltd. & Ors.**, reported in (2006) 6 SCC 736.
- (iv) **Inder Mohan Goswami & Anr. Vs. State of Uttaranchal & Ors.**, reported in (2007) 12 SCC 1.
- (v) **V.Y. Jose & Anr. Vs. State of Gujarat & Anr.**, reported in (2009) 3 SCC 78.

6. All the judgments are on the point that when a Court can rely on the documents attached with the petition and that a complaint can be quashed where the allegations made in the complaint, even if they are taken on their face value and accepted in their entirety, no *prima facie* offence is made out. Paragraph 20 of the **Harshendra**



Kumar D. Vs. Rebatilata Koley etc., reported in **AIR 2011 SC 1090**, reads as under:-

“20. In our judgment, the above observations cannot be read to mean that in a criminal case where trial is yet to take place and the matter is at the stage of issuance of summons or taking cognizance, materials relied upon by the accused which are in the nature of public documents or the materials which are beyond suspicion or doubt, in no circumstances, can be looked into by the High Court in exercise of its jurisdiction under Section 482 or for that matter in exercise of revisional jurisdiction under Section 397 of the Code. It is fairly settled now that while exercising inherent jurisdiction under Section 482 or revisional jurisdiction under Section 397 of the Code in a case where complaint is sought to be quashed, it is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations. However, in an appropriate case, if on the face of the documents – which are beyond suspicion or doubt – placed by accused, the accusations against him cannot stand, it would be travesty of justice if accused is relegated to trial and he is asked to prove his defence before the trial court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have significant bearing on the matter at prima facie stage.”



7. In the case of **Indian Oil Corporation Vs. NEPC India Ltd. & Ors.**, reported in **(2006) 6 SCC 736**, on which reliance has been placed by the learned counsel, a dispute had arisen out of two contracts entered into between IOC and NEPC India Limited on the one hand and between IOC and Skyline NEPC India Limited for supplying to them aviation turbine fuel and aviation lubricants. There was an allegation that in respect of aircraft fuel supplied under the said contracts, NEPC India Limited became due in a sum of Rs. 5,28,23,501.90 and Skyline NEPC India Limited became due in a sum of Rs. 13,12,76,421.25. Since there were defaults in payment, the allegation was that the respondents induced the appellants to resume supply of aircraft fuel on cash and carry basis by entering into a further agreement and in that set of facts the Hon'ble Apex Court came to a conclusion that the allegations in the complaint were sufficient to constitute offences under Sections 415 and 425 IPC. The Hon'ble Apex Court set aside the order of the High Court insofar as it quashes the complaint under Sections 415 and 425 IPC.

8. This Court is not discussing the entire facts and circumstances of each and every case which have been cited on behalf of the petitioners because it is not necessary to do so when the Court has found from a reading of the complaint petition that the allegation against the petitioners are that after death of the husband of the



complainant they stopped paying money which they were paying to the husband of the complainant and then on demand she was thrown out of her house. There are also allegations that accused no. 1 took rupees one lac from the complainant for purpose of getting service of her son but when the job was not made available and a demand was raised for refund of money, the accused abused the complainant and the petitioner no. 1 caught hold of her by her hair and started dragging her out of house. There are specific allegations against the petitioners. There are allegations of assault and snatching away a golden chain and a sum of Rs. 30,000/-. Learned Magistrate has found a *prima facie* case under Sections 323, 379, 406 and 420 IPC. Before this Court only the statement of the complainant is available. In her statement on oath, she has made allegations against all the accused persons and has also asserted that the witnesses have seen the alleged occurrence. As stated above, the depositions of the witnesses are not available for perusal of this Court. Submission of learned counsel for the petitioners are that this Court can go into the merit of the allegations as those are false and flimsy allegations and a civil dispute has been given a colour of criminal proceeding.

9. Having heard and considered the submissions of the learned counsel for the petitioners, this Court is of the considered opinion that on the basis of the specific allegations made by the



complainant against the petitioners and her assertion that the other witnesses have also seen the occurrence, an enquiry U/S 202 Cr.P.C. was held by learned Magistrate, the enquiry witnesses supported the allegations as it appears from the order taking cognizance and on being *prima facie* satisfied that a case U/S 323, 379, 406 & 420 IPC is made out, impugned order has been passed, it is not a fit case to interfere with the order taking cognizance and issuance of summons. The documents enclosed with the application by way of defense are relating to the partition and Schedule I properties which are not in the nature of a public document or undisputed documents. The parties are fighting in Civil Court where Title Suit no. 245 of 2012 is going on and these documents on which the petitioners are relying are to be tested in the said suit pending between the parties and, therefore, it would not be legal, just and proper for this Court to interfere with the order taking cognizance on the basis of those documents. The observations of this Court for not accepting the defence of the petitioners based on those documents shall not be construed as any opinion of this Court on the evidentiary value of those documents in the civil suit. The judgments cited on behalf of the petitioners do not support the case of the petitioners and in the given facts, this Court is not inclined to interfere with the order taking cognizance. The petitioners shall be at liberty to raise all such issues which are



available to them at the stage of framing of charge.

10. The application thus stands dismissed.

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	19.07.2017
Uploading Date	26.07.2017
Transmission Date	26.07.2017

