

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.7485 of 2014

Arising Out of PS.Case No. -227 Year- 2013 Thana -DARBHANGA COMPLAINT CASE District-
DARBHANGA

- =====
1. Javed Akhtar Son of Md. Owaid
 2. Shahnawaz Akhtar @ M. Shahnawaz Akhtar Son of Md. Owaid
 3. Sarfaraz @ M. Sarfaraz Akhtar Son of Md. Owaid
 4. Waseem Ahmad @ Waseem Ahmad Shakil Son of Md. Shakil
 5. Nikhat Fatema Wife of Md. Sarfaraz
 6. Farhana Khatoon Wife of Owaid
- All Resident of Village - Sidhauili, Police Station - Ashok Paper Mill, District-
Darbhanga.

.... Petitioners

Versus

1. The State of Bihar
2. Md.Sabir Son of Md. Zubair Resident of Village Sidhauili, Police Station Ashok
Paper Mill, District Darbhanga

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Sajid Salim Khan, Advocate
For the State : Mr. Damodar Prasad Tiwary, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 08-09-2017

Heard learned counsel for the petitioners, learned APP for
the State and as well as learned counsel appearing on behalf of
opposite party no.2.

2. The petitioners seek quashing of the cognizance order
dated 23.04.2013, passed by Judicial Magistrate, 1st Class,
Darbhanga in Complaint Case No.227 of 2013, whereby he has taken
cognizance of the offence under Sections 323, 379, 504 and 452 of
the Indian Penal Code.

3. A short fact giving rise to the case is that all accused
persons variously armed came to the house of the complainant, broke



lock of the bag and took away complainant's passport, ticket, Rs.20,000/- cash and jewellery worth Rs.1,50,000/-. The complainant protested then some of the accused assaulted him and also snatched away his mobile phone and Rs.35,000/- cash was taken by one Nikhat Fatema.

4. Learned counsel for the petitioners submits that complainant, Md. Sabir was married with Nuzhat Fatema in the year 2004 but after marriage, he started committing domestic violence, left for Saudi Arabia and solemnized marriage with a Philippine girl and started neglecting his wife, so she filed a case under the Domestic Violence Act on 24.01.2013 in Maharashtra where she was residing with her parents. Knowing the fact of lodging of domestic violence case, her husband Md. Sabir, the present complainant, lodged a number of cases against her and other family members to take personal vengeance in order to settle the score as she had filed a case against him under the Domestic Violence Act. However, fed up with the attitude of the husband, she has taken *Khula* to start a fresh life, she also left doing *pairvi* in the domestic violence case and that was dismissed for non-prosecution but the husband is pursuing the matter and in the present case the accused persons are cousin brother-in-law, uncle, elder married sister of the wife and her aunt and all are closely related with each other including the husband. The present



complaint was lodged on 23.02.2013 after lodging of the domestic violence case by the wife making allegation of entering into the house and committing theft so the present complaint is vexatious and malicious in nature lodged with a purpose to harass his wife and her near relatives.

5. Contrary to that, learned counsel appearing on behalf of opposite party no.2 submits that the learned Magistrate has taken cognizance of the offence after taking into account the allegation and material transpiring during the enquiry. He further submits that may be there may be a matrimonial discord between husband and wife but this complaint has not been filed in order to wreck personal vengeance.

6. Having considered rival submissions and on perusal of record, the Court finds that the present complaint is vexatious and malicious in nature for the reason that complainant's wife earlier filed a domestic violence case against him precisely on 24.01.2013 thereafter the present complaint was lodged by him as well as other complaints also against the close relatives and family members and in some cases wife is also made accused. Moreover, in the present complaint the allegation relates to 26.09.2012 and the complaint is filed belatedly on 23.02.2013 without any cogent reason or explanation, so in the backdrop of such facts, the present complaint



filed against the relatives of the wife as she had earlier filed a case under Domestic Violence Act appears malicious in order to wreck personal vengeance and to put pressure to withdraw the cases filed under the Domestic Violence Act, so the continuation of the criminal proceeding would be abuse of the process of the Court, hence the entire prosecution inclusive of the cognizance order dated 23.04.2013, passed by Judicial Magistrate, 1st Class, Darbhanga in Complaint Case No.227 of 2013 is hereby set aside.

7. The applications stand allowed.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.09.2017
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