

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.29868 of 2012

Arising Out of PS.Case No. -104 Year- 2009 Thana –Bhagwanpur Belaon District- BHABHUA
(KAIMUR)

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1. Alok Narayan Singh S/O Late Kapil Dev Narayan Singh Resident Of Alok Bhawan, Karman Tola South Of Moti Cinema Hall, Main Station Road, P.S.- Ara (Nawada), District- Bhojpur
 2. Maju Singh W/O Sri Alok Narayan Singh Resident Of Alok Bhawan, Karman Tola South Of Moti Cinema Hall, Main Station Road, P.S.- Ara (Nawada), District- Bhojpur

.... Petitioners

Versus

1. The State Of Bihar
2. Chandrawati Kunwar W/O Late Sarvdeo Narayan Singh Resident Of Village- Devdhi, P.S.- Charpokhari, District- Bhojpur

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Ravindra Kumar

For the Opposite Party/s : Mr. M.K. Gautam, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 17-05-2017

Heard the learned counsel for the petitioners and the learned APP for the State.

2. The petitioners seek quashing of the order dated 05.06.2012 passed by the learned Chief Judicial Magistrate, Bhabua (Kaimur) in Bhagwanpur Belaon P.S. Case No. 104 of 2009 and also the entire proceeding. The learned Magistrate as per impugned order finding sufficient materials against the petitioners for the offences under Section 406 and 498A of the Indian Penal Code, ordered for issuance of summons.



3. The facts in brief is that the Opposite Party No. 2 filed a complaint case on 13.10.2009 on the file of the learned C.J.M., Kaimur alleging inter alia that her husband died within one year of her marriage. She became owner of the landed property on measuring 7-10 acre left by her father-in-law at village Devdhi. The complainant sold the land measuring 7-10 acres land of Khata No. 32 and received an amount of Rs. 2,75000/- out of which she spent Rs. 75000/- and kept 2,00,000/- separately. She has further stated that her nephew died in the year 1996 and she visited Khajura to attend Shradh ceremony. She carried the said amount and ornaments in a steel box for safety. The petitioner No. 1 also visited at Khajura to attend Shradh ceremony. The complainant was very much impressed with the behaviour of petitioner no. 1 and she having faith in petitioner no. 1 handed over an amount of Rs. 2,00,000/- and ornaments along with the box to carry with him for safe custody at her husband's place. The petitioner no. 1 took the box, cash and ornaments and returned back with one Vijay Bahadur Singh (witness No. 2). After four or five months, the complainant returned back to Devdhi and demanded her property upon which the petitioner no. 1 disclosed that the same have been kept in the locker of his wife and he will return the same later on. The complainant kept quite seeing her property in safe custody as she



had no need for the time being. The intention of the petitioners (accuseds) subsequently changed and they started abusing and assaulting the Opposite Party No. 2 (Complainant). They started pressing her to relinquish the properties which were inherited by her father-in-law. The petitioners took the complainant to Ara in connection with her treatment and on the pretext of purchasing the land in her favour, got three photographs and some signatures of the complainant on few papers. The complainant subsequently learnt that on the pretext of acquiring the land, the accused persons got some documents prepared. The accused persons have thus committed breach of trust by retaining her cash amount, ornaments and also tortured her. On the basis of the said complaint petition, the aforesaid Bhagwanpur Belaon P.S. Case No. 104 of 2009 was registered. After investigation, the police submitted final form on 31.10.2011. A protest petition was also filed which was treated as complaint case. After examining the complainant on S.A. and other witnesses, the court below found prima facie case against the petitioners and ordered for issuance of summons as per impugned order as stated above.

4. The learned counsel for the petitioners submits that the petitioners and the complainant are descendent of common



ancestor. The complainant is the daughter-in-law of late Zeera Devi, widow of late Rajkumar Nandjee Singh. The husband of the complainant died issueless and so the mother-in-law of the complainant kept her nephew Kameshwar Prasad Singh, who used to look after. The land among two ladies were divided and Khatiyan was prepared in her name under Khata No. 32 area 7 acre 10 decimal and area measuring 11 acre 1 decimal under Khata No. 86 was recorded in the name of Zeera Devi. The complainant used to sell her share and give the money to her nephew at her Naihar. He further submits that Zeera Devi during her life time executed a will in favour of her nephew Kameshwar Prasad Singh. The said Kameshwar Prasad Singh has filed a probate case No. 36 of 2009 on 05.08.2009. The complainant having come to know about filing of probate case has filed the present complaint case on 13.10.2009 in connivance with her nephew. The police found the case false during investigation and accordingly submitted final form. The complainant although appeared in the said probate case, but she did not file rejoinder and she has disposed of the valuable property which was bequeathed in favour of Kameshwar Prasad Singh. The complainant never resided at her husband's place and so the question of any torture by the petitioners does not arise. The allegation of giving money and ornaments to these petitioners is a



cock and bull story and no offence as such is made out.

5. The learned APP for the State opposed the submissions. It is submitted that the Magistrate recorded the statement of the complainant and other witnesses and finding prima facie case, ordered for issuance of summons.

6. On perusal of documents which are annexed with the application and other materials available on record, I find that the complainant has not disclosed the date of her marriage as also the date of death of her husband. From complaint petition, it appears that the complainant has mentioned the place of occurrence at three places. She has alleged that the occurrence took in between 1996 till 10.10.2009. The grandfather of the petitioner no. 1 and father-in-law of the complainant were co-sharer and they had partitioned their property. It further appears that Kameshwar Prasad Singh has filed a probate case against the complainant and other near relatives much earlier to the complaint case of the complainant. It further appears that the complainant is aged about 85 years and as per submission, she is residing in her *Naihar*. The dispute between the parties is purely a civil dispute for landed property. I do not find any specific act of cruelty at the instance of the petitioners. There are contradictions in complaint petition as well as the statements of



the witnesses on the point of giving money and ornaments to the petitioners. In such circumstance, continuance of the criminal proceeding for the said land dispute would be misuse of process of the Court. The impugned order as such is not sustainable.

7. In view of the discussions made hereinabove, the instant application deserves to be allowed. Accordingly, the application is allowed. The order dated 05.06.2012 passed in Bhagwanpur Belaon (Kaimur) P.S. Case No. 104 of 2009 and all consequential proceedings arising thereafter are quashed.

(Sanjay Kumar, J)

ajaypd./-

AFR/NAFR	NAFR
CAV DATE	N/A
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