

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.11840 of 2014

Arising Out of PS.Case No. -19 Year- 2013 Thana -AURANGABAD COMPLAINT CASE District-
AURANGABAD

- =====
1. Ashok Kumar Singh, Son of Raghupat Singh, Resident of Village + P.O.- Kunda, P.S.- Aurangabad Town, District- Aurangabad.
 2. Jitendra Singh @ Bholu Singh, S/O Late Ram Chandra Singh, Village + P.O.- Khairi, P.S.- Aurangabad Town, District- Aurangabad

.... Petitioners

Versus

1. The State of Bihar,
2. Nirmala Devi, W/O Rajendra Singh, Resident of Village- Khairi, P.S.- Muffasil, District- Aurangabad
3. Jagmati Devi, W/O Late Ram Chandra Singh, Resident of Village- Khairi, P.S.- Muffasil, District- Aurangabad.

.... Opposite Parties

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Appearance :

For the Petitioners	: Mr. Mayank Shekhar, Advocate,
For the O.P No.2	: Mr. Narendra Kumar, Advocate,
	Mr. Tej Narayan Singh, Advocate,
For the O.P. No.3	: Mr. Bireshwar Bharadwaj, Advocate,
For the State	: Mr. Dashrath Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

Date: 13-11-2017

Heard learned counsel for the petitioner, learned counsel appearing on behalf of O.P. No.2 and 3 and also learned A.P.P. for the State.

2. This application has been filed under Section 482 of the Code of Criminal Procedure to quash the order dated 20.09.2013 passed in Complaint case No. C/19 of 2013 (Tr. No. 2244 of 2013), whereunder the Chief Judicial Magistrate, Aurangabad summoned the petitioners, on enquiry, under Section 204 of the Code of Criminal Procedure finding prima facie case under Sections 365 and 380/34 of the Indian Penal Code.

3. The facts leading to this application are that O.P.



No.2 Nirmala Devi filed the Complaint Case No. 1028 of 2011 to the effect that on 03.12.2011 at about 2.00 P.M. both the petitioners came at her door boarding on Bolero vehicle and forcibly took her mother-in-law Jagmati Devi boarding in the Bolero vehicle. At that time petitioner No.1 Ashok Kumar Singh also took valuable papers and cash of Rs. 2000/- and golden chain worth of Rs. 30,000/- from the box kept in the house. When O.P. No.2 made protest then she was abused by petitioner No.1.

The aforesaid Complaint Case No. 1028 of 2011 filed by the O.P. No.2 was sent under 156 (3) of Cr.P.C. by the Court of Chief Judicial Magistrate, Aurangabad for investigation. Thereafter, Aurangabad P.S. Case No. 24 of 2012 was instituted on 02.02.2012 under Sections 341, 342, 323, 379 and 504/34 of the Indian Penal Code against the petitioners on the basis of Complaint Case No. 1028 of 2011.

4. On investigation, the Police submitted the Final Form against the petitioners, but the protest petition filed by O.P. No.2 was treated as Complaint Case No. C/19 of 2013 in which on enquiry the petitioners have been summoned through the impugned order under Section 204 I.P.C. finding prima facie case under Sections 365 and 380/34 of the Indian Penal Code.

5. Learned counsel for the petitioner submits that petitioner No.2 Jitendra Singh @ Bholu Singh is none but own son of the victim Jagmati Devi (O.P. No.3) step mother of Rajendra Singh husband of O.P. No.2 Nirmala Devi, whereas, petitioner No.1 Ashok Kumar Singh is the son-in-law of sister of O.P. No.3 Jagmati Devi. Further submission is that in course of investigation in Aurangabad Muffasil P.S. Case No. 24 of 2012, which was instituted against the petitioners on the basis of the



Compliant Case No. 1028 of 2011 of the O.P. No.2, the Investigating Officer recorded the statement of victim Jagmati Devi (O.P. No.3), who denied her kidnapping saying that she moved with her son Petitioner No.2 Jitendra Singh due to family dispute and due to that reasons accordingly the office submitted Final Form. But only to give pressure the O.P. No.2 filed the protest petition in the said case, which was numbered as Complaint Case No. C/19 of 2013 in which petitioners have been summoned, on enquiry, under Section 204 Cr.P.C. through the impugned order while the victim O.P. No.3 Jagmati Devi, mother of petitioner No.2 was not examined under Section 202 of Cr.P.C. Further submission is that O.P. No.3 Jagmati Devi also appeared before this Court and filed counter affidavit and also stated before this Court, which is apparent from order dated 08.09.2017 that she was not kidnapped rather she left the house with her son Petitioner No.2 Jitendra Singh due to family quarrel as the complainant O.P. No.2 is her step daughter-in-law.

6. On the other hand, learned counsel appearing on behalf of complainant/O.P. No.2 submits that there is no illegality in the impugned order, but fairly submitted that the victim/O.P. No.3 Jagmati Devi was not examined in the Complaint Case No. C/19 of 2013, on enquiry under Section 202 Cr.P.C. victim Jagmati Devi (O.P. No.3) had also appears before this Court and gave her statement on 08.09.2017 and also filed counter affidavit denying the allegation of complainant-O.P. No.2 due to pressure.

7. On perusal of the complaint petition and other materials available on the record it appears that it is not in dispute that petitioner No.2 Jitendra Singh is the son of the victim Jagmati Devi (O.P.



No.3) step mother of complainant/O.P. No.2 and petitioner No.1 is the son-in-law of sister of victim Jagmati Devi (O.P. No.3). She also gave her statement in this case on 08.09.2017 denying about her kidnapping and filed the counter affidavit in that regard in this case. Admittedly, the victim/O.P. No.3 was not examined on behalf of the complainant during enquiry under Section 202 Cr.P.C. before passing the impugned order. As such, impugned order summoning the accused-petitioners, on enquiry, under Section 204 Cr.P.C. finding prima facie case under Sections 365 and 380/34 of the Indian Penal Code through the impugned order is illegal and further proceeding thereof in Complaint Case No. C/9 of 2013 amount to abuse of the process of court.

8. In the result, the impugned order dated 20.09.2013 passed in Complaint case No. C/19 of 2013 (Tr. No. 2244 of 2013), whereunder the Chief Judicial Magistrate, Aurangabad summoned the accused-petitioners, on enquiry, under Section 204 of Cr.P.C. finding prima facie case under Sections 365 and 380/34 of the Indian Penal Code and entire criminal proceeding of the aforesaid case is hereby quashed and this application is allowed.

(Rajendra Kumar Mishra, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.11.2017
Transmission Date	16.11.2017

