

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.27342 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- DARBHANGA

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1. Md. Zubair Alam S/O Late Motiur Rahman R/O Vill.- Harsinghpur, P.S.- Ghanshyampur, Distt.- Darbhanga
 2. Majeed Alam @ Md. Azam S/O Md. Zubair Alam R/O Vill.- Harsinghpur, P.S.- Ghanshyampur, Distt.- Darbhanga
 3. Md. Sohail Alam @ Naiyar(Wrongly Named As Junaid Alam @ Naiyar) S/O Md. Zubair Alam R/O Vill.- Harsinghpur, P.S.- Ghanshyampur, Distt.- Darbhanga
 4. Md. Junaid Alam @ Polo S/O Md. Zubair Alam R/O Vill.- Harsinghpur, P.S.- Ghanshyampur, Distt.- Darbhanga
 5. Md. Parwez Alam @ Parwez S/O Md. Zubair Alam R/O Vill.- Harsinghpur, P.S.- Ghanshyampur, Distt.- Darbhanga

.... Petitioner/s

Versus

1. The State Of Bihar
2. Hifzur Rahman S/O Of Muzaffar Hasan R/O Vill.- Harsinghpur, P.S.- Ghanshyampur, Distt.- Darbhanga

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Iqbal Asif Niazi, Advocate
Mr. Abubakar, Advocate

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

Date: 11-05-2017

The instant criminal miscellaneous has been filed for quashing the order dated 21.08.2008 passed by Sri. A.P. Gupta, Judicial Magistrate, 1st Class, Biraul at Benipur, Darbhanga in C.R. Case No. 312 of 2008 Trial No. 2394 of 2008 whereby and whereunder, cognizance has been taken under Sections 147, 323, 379 and 386 of the Indian Penal Code against the petitioners and for quashing the order dated 13.03.2009 passed by the learned Sessions



Judge, Darbhanga in Cr. Rev. No. 470 of 2008 whereby and whereunder, he has been pleased to dismiss the revision application preferred against the aforesaid cognizance order, and consequently for quashing the entire criminal proceeding pending against the petitioners in connection with the present case.

2. Heard the learned counsel for the petitioners and learned A.P.P. for the State.

3. The O.P. No. 2 in spite of service of notice has not appeared.

4. The facts of the case is that the complainant approached accused no. 1 (Petitioner no. 1) for VISA and the petitioner no. 1 assured that his son will provide VISA at a cost of Rs. 50,000/- and accordingly, on 15.07.2005 the complainant gave him Rs. 50,000/- in cash along with his passport. In the month of July, 2008 accused no. 2 and 3 came to their house but they do not provide him any VISA.

5. On 15.07.2008 the complainant went to the house of accused persons and demanded back money, thereafter, all the accused persons started abusing and assaulting him. Accused no. 2 put his revolver on his *Kanpatti* and forcibly took his thumb impression on two black papers which was kept by accused no. 3. It is further alleged that accused no. 5 snatched his wrist watch worth Rs. 1000/-



whereas accused no. 4 took out Rs. 1000/- from his pocket.

6. The complainant was examined on solemn affirmation and three enquiry witnesses namely, Sami Haidaer, Phool Baboo and Sahid Hussain were examined and considering those materials, the learned Magistrate passed the summoning order.

7. The learned counsel for the petitioners submits that there was strange relationship between the complainant and the accused persons since long. Title Suit No. 09 of 2004 and partition Suit No. 13 of 2007 are pending between the parties and further the petitioner no. 1 has lodged Ghanshyampur P.S. Case No. 163 of 2004 under Sections 341, 323, 448, 379, 380, 504/34 against the complainant-O.P. No. 2 and witnesses, wherein cognizance has also been taken. It is not believable that in spite of such a strange relationship, even there was no talking term between the parties, the complainant will give Rs. 50,000/- to the petitioner with his passport. All these allegations are absolutely false and concocted.

8. The learned counsel for the petitioners further submits that on similar situation the summoning order and entire prosecution was quashed in the case of **Vijay Kumar Singh and ors. Vs. The State of Bihar and ors** reported in **2010 (3) PLJR (966)**.

9. The learned APP on the other hand submits that the revision application of the petitioner was dismissed and the order of



learned judicial Magistrate was confirmed.

10. It is also submitted that this criminal miscellaneous is not maintainable as the revision application was dismissed by Sessions Judge.

11. Having considered the submissions urged at the Bar going through the record it is manifest that besides title suit and partition suit, criminal case was going on between the complainant and the accused persons and in such a situation, when there was enmity between the petitioners and the complainant, it can be simply absurd to say that complainant would pay Rs. 50,000/- along with passport to the petitioner no. 1 for VISA. It appears that it is a counter case of Ghanshyampur P.S. Case No. 163 of 2004 dated 20.12.2004.

12. Now the question is whether this criminal miscellaneous is maintainable or not as the revision application of the petitioners was dismissed. It is true that that if revision petition has been filed and has been dismissed, it may act as an obstruction to the filing of the petition of the present nature unless a special case is made out which may indicate to the court that the very prosecution was vexatious malafide or the facts were inherently improbable or that the very complaint was barred by any special law for the time being in force. The reliance can be placed upon the decision of the Apex Court in para 10 of the judgment in **Madhu Limay's** case reported in **A.I.R.**



1978 SC (47). The Supreme Court was placing reliance upon **R.P. Kapoor Vs. Sardar Pratap Singh Kairon** reported in **AIR, 1961 SC (1117)** to observe that making out a special class of case in which the exceptional jurisdiction created by Section 482 of the Code of Criminal Procedure could be exercised by the High Court was essential. It may be pointed out that there may be some other decisions, including the **State of Haryana Vs. Bhajan Lal** reported in **AIR 1992 SC (604)** which laid down seven conditions, which may point out the special class of cases in which a prosecution could be quashed.

13. Thus, it is held that this criminal miscellaneous is maintainable because here the relationship existing between the parties could be such making it impossible for them to keep on talking terms. It appears that on account of being irked by the fact that petitioner no. 1 had initiated a criminal prosecution through First Information Report, probably the complainant was attempting to avenge act of petitioners and wanted to humiliate them by foisting upon them an extremely vexatious prosecution.

14. In the result the order dated 21.08.2008 passed by J.M. 1st Class, Biraul at Benipur, Darbhanga in C.R. No. 312/2008, Trial No. 2394/2008 and the order dated 13.3.2009 passed by learned Sessions Judge, Darbhanga in Cri. Rev. No. 470/2008 are hereby quashed and



consequently the entire criminal proceeding pending against the petitioners, in connection with the present case, is quashed.

15. In the result, this criminal application is hereby allowed.

(Jitendra Mohan Sharma, J)

sushma/-

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Uploading Date	
Transmission Date	

