

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.24656 of 2011

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

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1. Dhaneshwar Rai, S/O Late Gopi Rai, Resident of Village- Gaspur Isra, P.S- Sadar, District- Vaishali.
 2. Shiv Shankar Rai, S/O Dhaneshwar Rai, Resident of Village- Gaspur Isra, P.S- Sadar, District- Vaishali.
 3. Ram Shrestha Singh, S/O Late Bhela Singh, Resident of Village- Gaspur Isra, P.S- Sadar, District- Vaishali.
 4. Ram Ekbal Giri @ Ekbali Giri, S/O Late Nand Lal Giri, Resident of Village- Gaspur Isra, P.S- Sadar, District- Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar
2. Rambilas Rai, S/O Late Punit Rai, Resident of Village- Gaspur Ijra, P.S- Sadar, District- Vaishali.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. S.Azim, Advocate. Mr. Rajeev Ranjan No. II, Advocate.
For the Opposite Party no.2	:	Mr. Pankaj Kumar, Advocate. Mr. Santosh Kumar, Advocate.
For the State	:	Mr. B. N. Pandey, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

Date: 14-11-2017

Heard learned counsel for the petitioners, learned counsel for the opposite party no.2 and the learned A.P.P. for the State and also perused the record.

2. This application, under Section 482 of the Code of Criminal Procedure, is directed against the order dated 14.01.2010 passed in Complaint Case No. 1564 of 2008, whereby the learned Sub-Divisional Judicial Magistrate (West), Muzaffarpur,



summoned the accused-petitioners, on enquiry, under Section 204 of Cr.P.C finding the prima facie case, under Sections 323, 341, 379 and 384/34 of the Indian Penal Code.

3. The facts leading to this application are that complainant-opposite party no.2, Rambilas Rai, filed the Complaint Case No. 1564 of 2008 in the court of Sub-Divisional Judicial Magistrate (West), Muzaffarpur, to the effect that, on 02.09.2008, in the evening, he was returning to his house after purchase of she-buffalo. In the way, accused-petitioners surrounded him near bridge of canal situated near Turki (Out Post), Muzaffarpur. At that time, Ram Ekbal Giri @ Ekbal Giri pointed the pistol at his temporal region and all pressurized to put signature on the blank stamp paper giving threatening of dire consequences. When the complainant-opposite party no. 2 made protest then he was assaulted through fist and slaps. Thereafter, accused-petitioners got his signature and thumb impression on the blank stamp paper. At that time, Ram Shrestha Singh, petitioner no. 3, took cash of Rs.900/- to his pocket. While the complainant-opposite party no. 2 reached at Turki (Out Post) and gave information about the incident, and the Incharge of Turki (Out Post) assured him about lodging the case, but the case was not lodged due to that reason he filed the complaint case on 18.09.2008 in the Court.



On inquiry, the learned Sub-Divisional Judicial Magistrate (West), Muzaffarpur, summoned the accused-petitioners, under Section 204 of Cr.P.C finding the prima facie case, under Sections 323, 341, 379 and 384/34 of the Indian Penal Code through the impugned order.

4. Learned counsel for the petitioners submits that, in fact, opposite party no. 2, Rambilas Rai, and his own brother, Krishna Rai, agreed to sale their land area 7 Katha 5 dhur covering under R.S.P. No. 31 of Khata No. 49 situated in Village Chakbaladhari, P.S. Sadar, District- Vaishali in favour of petitioner no. 1, Dhaneshwar Rai and consideration amount of Rs.10,78,000/- was fixed. The complainant-opposite party no. 2 and his brother, Krishna Rai, took full consideration amount on 01.09.2008 and proceeded on 02.09.2008 at Registry Office, Hajipur, where the draft of sale deed was prepared at the stamp papers. While complainant-opposite party no. 2 and his brother, Krishna Rai, put their signature on the draft of sale deed, but complainant-opposite party no. 2, Rambilas Rai, moved from there without giving any information. Thereafter, petitioner no.1, Dhaneshwar Rai, along with witnesses, petitioner nos.3 and 4, Ram Shrestha Singh and Ram Ekbal Giri @ Ekbali Giri returned to village. On much persuasion, complainant-opposite party no. 2, agreed to come at Registry Office



and accordingly, complainant-opposite party no. 2 and his brother, Krishna Rai, reached at Registry office along with petitioner nos. 1, 3 and 4 on 01.10.2008. While photographs of Krishna Rai, brother of complainant-opposite party no. 2, was taken and affixed on the sale deed, but complainant-opposite party no. 2 again left the Registry office without giving information. Thereafter, petitioner no. 1 started to give pressure upon complainant-opposite party no. 2 either to execute the sale deed or to return the consideration amount but he did not take any heed and he lodged the complaint Case No. 1564 of 2008. Further submission is the when the complainant-opposite party no. 2 neither turned up before registry office to execute the sale deed nor return the consideration amount then the petitioner no. 1, Dhaneshwar Rai, filed the Registration Case No. 03 of 2009-10 before the Collector, Vaishali on 30.07.2010 against the complainant-opposite party no. 2 and his own brother, Krishna Rai for compulsory registration, which would appear from Annexure 4 to the supplementary affidavit filed on behalf of the petitioners.

5. On the other hand, learned counsel for the complainant-opposite party no. 2, submits that the learned Sub-Divisional Judicial Magistrate (West), Muzaffarpur, has rightly summoned the accused-petitioners, on enquiry, under Section 204 of Cr.P.C finding the prima facie case, under Sections 323, 341, 379



and 384/34 of the Indian Penal Code. As far as submission of learned counsel for the petitioners is concerned about not executing of sale deed by Ram Bilas Rai and filing the present complaint case only to give undue pressure due to filing of case before the Collector regarding for compulsory registration of sale deed is concerned, petitioners may take their defence in course of trial in court below.

6. Annexure 2 is the draft of sale deed dated 02.05.2009, in which, complainant-opposite party no. 2 Rambilas Rai and his brother, Krishna Rai been have shown as executant of the sale deed in favour of petitioner no. 1, Dhaneshwar Rai and petitioner nos. 3 and 4 have put their signature as witnesses. It also appears that photographs of Krishna Rai, own brother of complainant-opposite party no. 2, Dhaneshwar Rai (petitioner no. 1) and Ram Ekbal Giri (petitioner no.4) are pasted in the sale deed and the place of photograph of Rambilas Rai, complainant-opposite party no. 2 is vacant. Annexure 4 of the supplementary affidavit is the copy of the Registration Case No. 3/2009-10 filed by petitioner no. 1, Dhaneshwar Rai, against complainant-opposite party no. 2 and his brother, Krishna Rai under Registration Act before the Collector, Vaishali at Hajipur supported with affidavit of Krishna Rai, brother of complainant-opposite party no. 2. As such, Complaint Case No. 1564 of 2008 appears to be filed by the



complainant-opposite party no. 2 with ulterior motive and continuance of further proceeding on summoning the accused-petitioners through the impugned order would amount to abuse of process of the court.

7. In the result, the order dated 14.01.2010 passed in Complaint Case No. 1564 of 2008 summoning the accused-petitioners and entire criminal proceeding is hereby quashed and this application is allowed.

(Rajendra Kumar Mishra, J)

Bhardwaj/-

AFR/NAFR	
CAV DATE	
Uploading Date	24.11.2017
Transmission Date	24.11.2017

