

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.31513 of 2014

Arising Out of PS.Case No. -925 Year- 2005 Thana -PATNA COMPLAINT CASE District-
PATNA

- =====
1. Ashok Kumar Agrawal Son of Late Banarasi Lal Agrawal Prop. Shree Oil Mills, Gauri Dal Ki Bhatti, Shimli, P.S.- Malsalami, District- Patna, Resident of Flat No.-302, Twin Tower, Near Gandhi Maidan, P.S.- Gandhi Maidan, District- Patna
 2. Dinesh Kumar Son of Sri Buddha Ram Employee of M/S Shree Oil Mills, Gauri Dal Ki Bhatti, Shimli, P.S.- Malsalami, District- Patna, resident of 1/26, Phase- 1 Budh Bihar, P.S.- Vijay Bihar, New Delhi

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance:

For the Petitioner/s : Mr. Alok Kumar Agarwal, Advocate.

For the Opposite Party/s : Mr. Fahimuddin, APP.

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**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL**

ORAL JUDGMENT

Date: 27-07-2017

Heard learned counsel for the petitioners, learned
counsel for the opposite party no.2 and learned APP for the State.

2. This application under Section 482 of the Code of



Criminal Procedure has been filed for quashing the order dated 20.12.2008 passed by learned Judicial Magistrate 1st Class, Patna City in Complaint Case No. 925 of 2005, whereby the learned Judicial Magistrate finding prima facie case against the petitioners under Sections 365 and 120B of the Indian Penal Code has ordered to issue summon against them.

3. It is submitted by learned counsel for the petitioners that the husband of the complainant, namely, Vikash Kumar was employee of the petitioner no.1 and he had gone to Darbhanga for delivery of 200 Tins of Soya Refined Oil to M/s Satya Narayan Ashok Kumar on 24.10.2005 and after delivery of the same, he received Rs. 1,21,680/- as the value of the said oil from the said purchaser factory, but he did not deposit the amount in the factory of petitioner no.1 rather assured to deposit on the next day and subsequently absconded with the said money for which the petitioner No.1 has filed Malsalami P.S. Case No. 140 of 2005 on 26.10.2005 under Section 408 of the Indian Penal Code. After investigation of the said case, I.O. submitted chargesheet against the husband of the complainant and he was apprehended by the police in the year 2013 and remanded in the said case. In order to save his skin from the said case, the husband of the complainant, namely, Vikash Kumar, got



this false and frivolous case filed by his wife against the petitioners with altogether wrong and concocted facts as a counter blast of Malsalami P.S. Case No. 140 of 2005 filed by the petitioners. Hence the proceeding against the petitioners is nothing but an abuse of process of the court. Hence, impugned order is liable to be quashed.

4. On the other hand, learned APP and learned counsel for the opposite party no.2 vehemently opposed the aforesaid submission of the learned counsel for the petitioners.

5. Form perusal of the record, it appears that one Nilu Kumari has filed the present complaint case bearing Complaint Case No. 925 of 2005 against the petitioners with the allegation in succinct that her husband, namely, Vikash Kumar, was Munshi-cum-supervisor in the factory of the petitioners. He left his house on 23.10.2005 at 9 A.M. for the factory of the petitioners, but he did not regress till 24.10.2005. On quizzing petitioner no.2, he assured that her husband would regress within 1-2 days. On misgiving, she approached petitioner no.1 who scolded her and told that her husband had gone out and will regress soon. But her husband did not regress. It is claimed by the complainant that her husband has been kidnapped by the petitioners.

6. During the course of enquiry, the complainant



examined herself on solemn affirmation and also examined one witness in buttress of her case. After perusing the complaint petition and materials available on record, the learned Magistrate finding prima facie case against the petitioners under Section 365 and 120B of the Indian Penal Code has ordered to issue summon against them.

7. From perusal of Annexure-2, it appears that Malsalami P.S. Case No. 140 of 2005 was instituted under Section 408 of the Indian Penal Code against the husband of the complainant, namely, Vikash Kumar on the basis of the written report of Ashok Kumar Agrawal, petitioner no.1 dated 26.10.2005 with the allegation as submitted by the learned counsel for the petitioners in the earlier paragraph. Annexure-5 filed by the petitioners indicates that the aforesaid case was investigated by the police and on conclusion of the investigation and finding the case true, I.O. has submitted chargesheet dated 27.03.2013 against the said Vikash Kumar under Section 408 of the Indian Penal Code remanding said accused in the case.

8. On perusal of the complaint petition, it appears that the complaint petition was filed on 29.10.2005 i.e. three days later to the filing of aforesaid F.I.R bearing Malsalami P.S. Case No. 140 of 2005 by the petitioner no.1.



9. In the aforesaid facts and circumstances, the case of the petitioners appears to be convincing and the present case appears to have been filed with ulterior motive and malice intention. Hence, to avoid the abuse of process of the court, I deem it fit and proper to quash the aforesaid cognizance order. Accordingly, this quashing petition is allowed and the impugned order is quashed.

(Prakash Chandra Jaiswal, J)

Mishra/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	
Transmission Date	

