

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.24621 of 2011

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

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Abhishek Kumar @ Chandan Kumar, S/O Dhurab Narain Thakur, R/O Mohalla -
Naibazar, Ward No. - 40, P.S. Nagar, Distt. -Muzaffarpur.

.... Petitioner

Versus

1. The State of Bihar
2. Most Rupkanta Devi, W/O Late Vijay Narain Thakur, R/O Mohalla -
Naibazzar, Ward No. - 40 P.S. -Nagar, Distt. - Muzaffarpur.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Aditya Nr. Singh-I, Advocate
Mr. Ritesh Kumar Nr. Singh, Advocate
For the Opposite Party/s : Mr. Arun Kumar, Advocate
For the State : Mr. Navin Kumar Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

Date: 14-09-2017

Heard learned counsel for the petitioner, learned counsel
appearing on behalf of O.P. No.2 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 05.04.2011
passed in Complaint case No. 1616 of 2010, whereunder the Judicial
Magistrate, 1st Class, Muzaffarpur summoned the three accused persons,
named in the compliant petition, including the petitioner, on enquiry,
under Section 204 of the Code of Criminal Procedure finding prima facie
case under Sections 323, 448, 379 & 380/34 of the Indian Penal Code.

3. The fact leading to this application is that O.P. No.2
Most. Rupkanta Devi filed the Complaint Case No. 1616 of 2010 with
contention that Dhurb Narayan Thakur, his wife Anita Thakur and his son
petitioner Abhishekh Kumar @ Chandan Kumar entered in her house



with intention to remove to the house and assaulted her. At that time, petitioner took away the box in which cash of Rs. 10,000/-, ornaments worth of Rs. 5,000/- and clothes worth of Rs. 5,000/- were kept. At that time, Anita Thakur snatched her golden bangles. At that time, two unknown persons who were present along with the accused persons caught hold of her both hands till the moving of the accused persons named in the complaint petition to the house while she went to Police Station on 05.06.2010, but her F.I.R. was not lodged.

After filing of the Complaint Petition No. 1616 of 2010 by the O.P. No.2, enquiry was conducted in which S.A. of the O.P. No.2 was recorded and four Enquiry Witnesses, namely, E.W.1 Anjarul Haq, E.W.2 Ravi Kumar Thakur @ Monu, E.W.3 Mohan Mahto and E.W.4 Saurabh Kumar Thakur @ Sonu were also examined.

4. On perusal of the Compliant Petition, S.A. of O.P. No.2 and the statements of the witnesses, the Judicial Magistrate, 1st Class, Muzaffarpur summoned the three accused named in the compliant petition including the petitioner under Section 204 Cr.P.C. for the offence punishable under Sections 323, 448, 379 & 380/34 of the Indian Penal Code through the impugned order.

5. Learned counsel for the petitioner submits that, in fact, Vijay Narayan Thakur, husband of the complainant/O.P. No.2 Most. Rupkanta Devi and co-accused Dhrub Narayan Thakur, father of the petitioner, are own brother and for partition of the ancestral land, the complainant lodged Compliant Case No. 1616 of 2016 in which the petitioner and his parents has been illegally summoned through the impugned order.



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 summoning the accused named in the Compliant Petition, including the petitioner, for the offence under Sections 323, 448, 379 & 380/34 of the Indian Penal Code, but fairly submitted that complainant/O.P. No.2 is the aunt of the petitioner and brother and Gotani of co-accused Dhrub Narayan Thkaur and his wife Anita Thakur.

7. On perusal of the complaint petition and S.A. of the complainant-O.P.No.2 it is apparent that she has stated against the petitioner and his parents about entering in her house with intention to remove her and causing assault taking of box containing cash, ornaments and clothes, but it has come that accused Dhrub Narayan Thakur and Anita Thakur are her brother-in-law and Gotani. A partition took place between them, but in spite of that they used to make quarrel regarding which a case is also going on. E.W.1 Anjarul Haq and E.W.3 Mohan Mahto have stated that complainant/O.P. No.2 and accused persons, including the petitioner, are agnates and there is land dispute in between them. E.W. 2 Ravi Kumar Thakur @ Monu and P.W.4 Saurabh Kumar Thakur @ Sonu, who are sons of the complainant-O.P. No.2, while supported the allegation made in the compliant petition against the petitioner and other co-accused, but they have stated in Court question that accused are their aunt and uncle and cousin and they used to reside adjacent to his house. A partition had also been taken place between them, but they are not following the decision of the partition and a case is also going on. From the complaint petition and S.A. of the complainant, admittedly, the complainant and three accused persons named in the



Complaint Petition, including the petitioner, are agnates and admittedly there is land dispute as such allegation of entering in the house of complainant-O.P. No.2 causing assault and committing theft of a box by the petitioner and other two co-accused containing cash, ornaments and clothes appears to be false and malicious as admittedly the case is of land dispute is also going on. As such impugned order summoning the accused-petitioner and her parents, on enquiry, under Section 204 Cr.P.C. finding prima facie case under Section 323, 448, 379 & 380/34 of the Indian Penal Code through the impugned order is illegal and amount to abuse of the process of court.

8. In the result, the impugned order dated 05.04.2011 passed in Complaint case No. 1616 of 2010, whereunder the Judicial Magistrate, 1st Class, Muzaffarpur summoned the accused named in the Complaint petition, including the petitioner, on enquiry, under Section 204 of Cr.P.C. finding prima facie case under Sections 323, 448, 379 & 380/34 of the Indian Penal Code and entire criminal proceeding is hereby quashed and this application is allowed.

(Rajendra Kumar Mishra, J)

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AFR/NAFR	NAFR
CAV DATE	N.A
Uploading Date	19.09.2017
Transmission Date	19.09.2017

