

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.39908 of 2013

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

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1. Laxmi Mallick S/O Late Bipat Mallick Resident Of Village- Manika, P.S.- Mushahari, District- Muzaffarpur.
2. Shail Devi W/O Laxmi Mallick Resident Of Village- Manika, P.S.- Mushahari, District- Muzaffarpur.
3. Darshan Mallick S/O Laxmi Mallick Resident Of Village- Manika, P.S.- Mushahari, District- Muzaffarpur.
4. Reena Devi W/O Darshan Mallick Resident Of Village- Manika, P.S.- Mushahari, District- Muzaffarpur. Petitioner/s

Versus

1. The State Of Bihar
2. Raju Mallick S/O Late Mahendra Mallick Resident Of Mohalla- Chuna Bhatti, P.S.- Lalit Narayan Mithila University, District- Darbhanga... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Anis Akhtar, Advocate

For the State : Mr. Bhanu Pratap Singh, APP

For the Opposite Party No.2: Mr. Durga Nand Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 04-04-2017

Heard the learned counsel for the petitioners, the learned Additional Public Prosecutor and Sri Durga Nand Jha, the learned counsel for the opposite party No.2/ complainant.

2. The petitioners filed this petition under Section 482 of the Code of Criminal Procedure (hereinafter referred to as the Code) to quash the order dated 04.11.2011 passed in Misc-306 of 2010/ C-1707 of 2010 by which the learned Judicial Magistrate found prima facie case under Section 379 of the IPC to proceed against the petitioners.

3. The complainant filed the complaint case alleging that on 04.08.2010 his father-in-law, Laxmi Mallick, mother-in-law, Shail



Devi, brother-in-law, Darshan Mallick and sister-in-law, Reena Devi, wife of Darshan Mallick, came to his house and stayed there on the eve of Mundan of his son. His mother had entrusted ornaments and Rs. 78, 872/- cash to Geeta Devi, wife of the complainant, but the accused persons fled away with the box containing ornaments and cash.

4. The complainant was examined on S.A. and he also examined his witnesses. The learned Judicial Magistrate, on perusal of the evidence of complainant and his witnesses, found prima facie case under Section 379 of the IPC to proceed against the accused persons by the impugned order dated 04.11.2011.

5. The learned counsel for the petitioners submits that petitioners are none else than father-in-law, mother-in-law, brother-in-law and sister-in-law of the complainant. There is dispute between the husband and wife. The husband filed case for restitution of conjugal rights. Admittedly, the wife of the complainant was not living with him. The complainant developed a story that his mother entrusted old ornaments and cash to his wife but the accused persons fled away with the box. Even the complainant in his S. A. has given wavering statements. Four witnesses have been examined during the enquiry but evidence of all the witnesses does not inspire confidence and the learned Judicial Magistrate, without giving any reason, mechanically found prima facie case under Section 379 of the IPC to proceed



against the petitioners.

6. The learned counsel for the petitioners further submits that, of course, under Section 204 of the Code the learned Magistrate is not required to give full reasons of finding out prima facie case nor to appreciate the evidence in all its pros and cons but at least some reasons showing appreciation of evidence in brief, for finding out prima facie case, must be stated in the order so that the superior courts must know, on perusal of the order itself, that what are the reasons of such finding. The order sans any reasoning and is bad on this ground also.

7. In reply to the submission of the learned counsel for the petitioners, Mr. Durga Nand Jha, the learned counsel for the opposite party No.2, made all efforts to support the order impugned and submits that the same does not suffer from any illegality but, while referring the evidence of witnesses, could not be able to point out reasons of believing such witnesses, who did not give any specific evidence.

8. Having considered the submissions and on perusal of the records, it appears that the complainant filed this case against his wife, father-in-law, mother-in-law, brother-in-law and sister-in-law/ wife of his brother-in-law. The complainant alleged that his in-laws and wife stayed in his house on the occasion of Mundan but in the wee hours of 05.08.2010 they all fled away with the box containing



ornaments and cash. From the perusal of the complaint petition as well as the evidence of the witnesses, it transpired that the husband and wife are not living together. The complainant in his S.A. made wavering statements about the commission of theft. Other witnesses are also either hearsay or they have no knowledge about the occurrence and they seem to have disclosed cock and bull story only to lodge the case on account of strained relation between the husband and wife.

9. The learned Judicial Magistrate, while coming to the conclusion, finding prima facie case under Section 379 of the IPC, did not at all gave any reason, summarily appreciating evidence of the complainant and his witnesses examined during the course of enquiry. Therefore, I find that the order dated 04.11.2011 passed in Misc-306 of 2010/ C-1707/2010 is palpably illegal and not sustainable. Accordingly, the same is set aside with a direction to the learned Judicial Magistrate to hold further enquiry and pass order in accordance with law. In the result, this quashing petition is allowed.

(Prabhat Kumar Jha, J)

BKS/-

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