

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.18035 of 2014

Arising Out of PS.Case No. -2975 Year- 2013 Thana -SIWAN COMPLAINT CASE District-
SIWAN

- =====
1. Mohd. Ayub @ Md. Ayub Khan, son of Mohib Khan,
 2. Adil Khan, son of Ayub Khan,
 3. Meraj Ahmed Khan, son of Mohib Khan,
 4. Hasan Imam Khan, son of late Sakur Khan,
 5. Makbul Anwar Khan, son of Manjoor Imam Khan @ Manjar Imam Khan,
 6. Sonu Khan @ M. Shahid Hasan @ Sonu, son of Hasan Imam Khan, all resident of village-Semari, P.S.- M.H. Nagar, Hasanpura, District-Siwan

.... Petitioner/s

Versus

1. The State of Bihar
2. Afroja Khatoon, wife of Seikh Mohd. Zamaluddin, resident of village-Semari Uttar Mazar, P.S.- M.H. Nagar, District- Siwan

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Javed Aslam, Advocate

For the Opposite Party/s : Mr. APP

Mr. Rajiv Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 31-10-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 05.03.2014 passed by the Judicial Magistrate, Siwan, in Complaint Case No.C-2975 of 2013 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioners for the offence under Section(s) 341, 323, 354-A, 379/34 Indian Penal Code.

2. Counsel for the petitioners has submitted that, initially, complaint was sent to Police Station under Section 156(3) Cr. P. C. The police after investigation submitted Final Form as dispute being civil dispute. Thereafter, on the basis of Protest



Petition filed by the Complainant, the Court below proceeded for enquiry and found *prima facie* case against all the accused for the offence under Section(s) 341, 323, 354-A, 379/34 of Indian Penal Code.

3. Learned counsel for the petitioners has submitted that the Complainant in her Solemn Affirmation has named only six persons, but the Magistrate has found *prima facie* case against all the seven persons named in the Complaint Petition. Learned counsel for the petitioners has also submitted that offence under Section 354-A of Indian Penal Code is not made out as there is no allegation of disrobing the Complainant.

4. Learned counsel for the Opposite Party No.2 has appeared and submitted that there is no illegality in the impugned order. Learned Court below is required to see only *prima facie* case at the time of taking cognizance. The Complainant has fully supported her case in the Complaint Petition. She has levelled specific allegation that the accused persons removed her *Dupatta* and had also entered into her house, assaulted her and snatched her golden chain.

5. Solemn Affirmation of the Complainant is annexed as Annexure-4. From perusal of Solemn Affirmation, it appears that the Complainant has named six accused persons. Complainant has levelled allegation against six accused persons that they removed her *Dupatta* and had also entered into her house, assaulted her and



snatched her golden chain.

6. In such circumstances, this Court does not find any illegality in the impugned by which learned Magistrate has found *prima facie* case against six accused, namely, Md. Ayub Khan, Adil Khan, Firoz Ahmad Khan, Maqbool Anwar Khan, Hasan Imam Khan and Sonu Khan.

7. However, the impugned order dated 05.03.2014 passed by the Judicial Magistrate, Siwan, in Complaint Case No.C-2975 of 2013, with regard to Petitioner No.3, Meraj Ahmad Khan, is not in accordance with law since the Complainant has not levelled any specific overt act against him in her Solemn Affirmation.

8. Therefore, impugned order along with entire criminal proceeding against Petitioner No.3, Meraj Ahmad Khan, is hereby quashed.

9. This application is, accordingly, allowed in part.

10. The Court below will proceed with trial against six accused persons named above in accordance with law.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	13-11-2017
Transmission Date	13-11-2017

