

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.12413 of 2013

Arising Out of PS.Case No. -45 Year- 2009 Thana -CHANDI District- -

- =====
1. Girija Prasad S/O Late Ram Govind Prasad Resident Of Village- Chandi, P.S.- Chandi, District- Bhojpur
 2. Shashi Bhushan Prasad @ Shashi Kumar S/O Not Known Resident Of Village- Chandi, P.S.- Chandi, District- Bhojpur

.... Petitioners

Versus

1. The State Of Bihar
2. Buchi Devi W/O Madan Prasad Resident Of Village- Chandi, P.S.- Chandi, District- Bhojpur

.... Opposite Party

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Appearance :

For the Petitioners	:	Mr. Jagjit Roshan Mr. A Paul Mr. Rajeev Ranjan
For the State	:	Mr. Mushtaque Alam, APP
For the O.P. No. 2	:	Mr. Bimal Kumar No. 2

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 31-10-2017

Heard learned Counsel for the petitioners and the learned Counsel appearing on behalf of the Opposite party No. 2.

2. The petitioners seek quashing of the cognizance order dated 22.2.2013 passed by the Judicial Magistrate, 1st Class, Ara in Complaint Case No. 301(C) of 2011, whereby taking cognizance of the offence under Sections 342, 323 and 504/34 of the IPC.

3. The short facts giving rise to the case is that the complainant earlier filed Chandi PS Case No. 45 of 2009 dated 9.6.2009 against five accused persons including these two petitioners registered under Section 364/34 of the IPC. However, on completion of investigation the police



submitted final form finding the case not true. The Court proceeded on the basis of protest petition filed by the informant treating the same as complaint. Thereafter it entered into enquiry, took cognizance of the offence only under Sections 342, 323 and 504/34 of the IPC.

4. The short fact, as alleged in the complaint case, is that on 4.6.2009 at 4.30 PM the complainant's husband had gone to the market but did not return back, so suspecting the involvement of the accused persons FIR was lodged on 9.6.2009. On the next day i.e. on 10.6.2009 the complainant received a telephonic information from the GRP Ara that her husband is in the Police Station, so she went there and found her husband in deteriorating condition. He was referred to Sadar Hospital, Ara for treatment and discharged from there on 16.6.2009. Then he disclosed that he was kidnapped by the accused persons and was brought to a hut forcibly, his finger ring and cash of Rs. 3260/- was taken away by the accused persons and they forcibly took his signature on two stamp papers, one Shashi Bhushan Prasad, one of the accused, also assaulted him with lathi. He became unconscious and later on a person came there and untied the hands and feet of her husband, gave him some water to drink and food. Thereafter he felt fit and woke up. He was brought to some other place. From there he escaped away finding himself near the western crossing of the Ara Railway Station.

5. Learned Counsel appearing on behalf of the petitioners submits that the petitioner No. 1 and the complainant's husband both are full brothers; petitioner No. 2 is son of petitioner No. 1. A partition suit



pending between the brothers since 1999 which was decreed in the year 2011, So due to this land dispute this false case was lodged implicating the family members also. In the impugned order the learned Magistrate himself disbelieves the theory of kidnapping finding no material, however, has taken cognizance under Sections 323, 342 and 504/34 of the IPC, despite the allegations levelled in the complainant being absurd and improbable. The police after making detailed investigation has found the case false. The complainant's husband himself appeared on the next day after lodging of the FIR and there was no injury on the person of the complainant's husband which is apparent from the discharge ticket of the Sadar Hospital, Ara, which is Annexure 3 though the allegation is of assault by lathi over the head.

6. Contrary to that, learned Counsel appearing on behalf of O.P. No. 2 submits that due to land dispute the complainant's husband was kidnapped by the accused persons and he was treated in the hospital also.

7. Having considered the rival submissions and on perusal of the record the Court finds this complaint was filed for wreaking personal vengeance against the petitioners, who are full brother of the husband of the complainant and his son. It is admitted position that there was partition dispute between the brothers, besides the complaint case also appears absurd and improbable. He himself turned up on the next day of lodging of the FIR and apparently there was no injury over his body. It is also relevant circumstance in this case that the police made a detailed



investigation and found the case false. The learned Magistrate himself has disbelieved the case of kidnapping, the primary allegation leveled in the complaint. So once the story of kidnapping is disbelieved, the other allegations cannot be sustained.

8. So for the aforesaid reasons the complaint appears to be spiteful and to wreak the personal vengeance in order to settle civil partition dispute this complaint case was filed. So the entire criminal proceeding inclusive of the cognizance order dated 22.2.2013 passed in Complaint Case No. 301(C) of 2011 and subsequent criminal proceeding pending in the Court of Judicial Magistrate 1st Class, Arrah with respect to the petitioners 1 and 2 only is set aside.

9. The application stands allowed.

(Arun Kumar, J.)

Snkumar/-

AFR/NAFR	
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