

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.34543 of 2013

Arising Out of PS.Case No. -76 Year- 2013 Thana -COMPLAINT CASE District- BANKA

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1. Shiv Durga Choudhary S/O Late Balgovind Choudhary Resident Of Village Jaipur, Police Station Katoria (Jaipur O.P.), District Banka.
2. Subodh Choudhary @ Subodh Kumar Choudhary S/O Shiv Durga Choudhary Resident Of Village Jaipur, Police Station Katoria (Jaipur O.P.), District Banka.
3. Pradeep Choudhary @ Pradip Kumar Choudhary S/O Shiv Durga Choudhary Resident Of Village Jaipur, Police Station Katoria (Jaipur O.P.), District Banka.

.... Petitioner/s

Versus

1. The State Of Bihar.
2. Sada Nand Choudhary S/O Late Charan Choudhary Resident Of Village Dara, Police Station And District Banka.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rajib Ranjan Jha
For the Opposite Party/s : Mr. Aditya Narayan Singh 1(App)
For O.P. No. 2 : Mr. Ajay Mukherjee.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

3 12-01-2017 Heard the parties.

By way of the present application preferred under Section 482 of the Code of Criminal Procedure, the petitioners seek quashing of the order dated 24.05.2013 passed by the, learned Judicial Magistrate -1st Class, Banka, in Complaint Case No. C-76/2013, for the offences punishable under Sections 385/34 of the Indian Penal Code.

The case of the prosecution in brief is that on the alleged date of occurrence, when the complainant along with his son was



returning home after closing his shop, petitioners assaulted the complainant and his son by means of fists and slaps and petitioner no. 2 snatched Rs. 15,000/- from the pocket of the complainant and petitioner no. 3 snatched Rs. 10,000/- from the pocket of the complainant's son. Thereafter a complaint case bearing Complaint Case No. C-76/2013 was lodged. The learned Court below after enquiry under Section 202 of the Code of Criminal Procedure, finding *prima facie* case under Section 385/34 of I.P.C issued process against the accused persons under Section 204 of the Code of Criminal Procedure and above order is under challenge before this Court.

It has been submitted on behalf of the petitioners that prior to institution of present case, petitioner no. 1 has filed a complaint case against the opposite party no. 2 and his son bearing Complaint Case No. 2108/2012 for the offences punishable under Section 4 of the Dowry Prohibition Act and Section 506 of the Indian Penal Code and only to take revenge the complainant has filed the present false case. It has further been submitted that learned Court below without appreciating the fact that there is no ingredient under Section 385/34 of the Indian Penal Code, found during the course of investigation, has issued process against the petitioners and that too in a most mechanical manner. It has also



been submitted by on behalf of the petitioners that the learned Court below failed to consider that present case filed by the complainant is out and out malicious proceeding, only in order to settle the grudge against the petitioners but the learned Court below without appreciating these aspects of the matter, passed the impugned order, issuing processes against the petitioners.

Learned Additional Public Prosecutor, appearing on behalf of the State has submitted that only after careful perusal of the materials collected during the course of enquiry, the learned Court below has issued the processes against these petitioners.

Having heard both sides and on perusal of the materials collected during the course of enquiry as well as from perusal of the impugned order, it appears that learned Magistrate has found sufficient materials against the petitioners for taking cognizance under Section 385/34 of the I.P.C. but he has nowhere stated that what are those materials on the basis of which he has come to such conclusion, as some of the witnesses had not stated about snatching of money.

However at present without giving opinion on the same, I think it proper to quash the order, dated 24.05.2013 passed by Sri N.K. Priyadarsi, Judicial Magistrate -1st class Banka in Complaint Case No. C-76/2013, and remit the matter back to the learned



Court below for passing an order afresh after perusal of materials available on record and also to examine whether materials available on record constitute offence under Section 385/34 or not.

With the observation, as above, this application is allowed, the order dated 24.05.2013 passed by the, learned Judicial Magistrate -1st Class, Banka, in Complaint Case No. C-76/2013, hereby quashed and the matter is remitted back to the Court below.

(Vinod Kumar Sinha, J)

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