

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.38552 of 2013

Arising Out of PS.Case No. -876 Year- 2009 Thana -PATNA COMPLAINT CASE District-
PATNA

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1. Ravindra Prasad Gupta @ Ravindra Kumar, son Of Late Narayan Sao
2. Satish Gutpa @ Satish Kumar, Son of Sri Ravindra Prasad Gupta
3. Sonu Kumar @ Sonu Gupta, Son of Sri Ravindra Prasad Gupta
All residents Of RZ- A 30/C, Mahavir Vihar, Near Dwarka Vill- Dwarka
Sector- I, P.S. - Dwarka New Delhi- 110045

.... Petitioners

Versus

1. State Of Bihar
2. Sri Sunil Kumar Son Of Sri Ganesh Lal, Resident Of Vill- Naya Gaon,
Laddu Ka Akhara, P.S- Alamganj, District - Patna.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Binod Kumar Sinha
For the Opposite Party/s : Mr. Anil Kumar (App)

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

5 25-01-2017 Heard learned counsel for the petitioners and learned
APP for the State.

The petitioners have filed this petition under Section
482 Cr.P.C. for quashing the order dated 02.01.2010 passed by
Sri Nitin Kaushik, learned Judicial Magistrate, Patna City in
Complain Case No. 876 of 2009 whereunder cognizance for the
offence under Section 323 I.P.C. was taken.

The petitioners are the in-laws of the complainant.
The allegation is that they along with two others went to the
house of the complainant and demanded of Rs. 50,000/- as loan.
On refusal of the complainant, an altercation took place and



thereafter, the petitioners allegedly assaulted him. The petitioners, further, snatched gold chain and cash amount of Rs. 500/- from his possession. The daughter of the petitioner no. 1, who is also the wife of the complainant, took ornaments and cash amount from the house of the complainant. After inquiry, the learned Judicial Magistrate took cognizance of offence under Section 323 I.P.C. as per impugned order.

The learned counsel for the petitioners submitted that the complainant is son-in-law of petitioner no.1 and the relationship of the complainant with the daughter of petitioner no. 1 got strained for which the daughter of petitioner no. 1 filed divorce case no. 275 of 2009 before the Family Court at New Delhi. Subsequent to the filing of the said divorce case, the complainant has filed the present complaint case with false and frivolous allegation in order to create defence. It was further submitted that the allegation of snatching and taking gold chain and cash from the house of the complainant has been disbelieved and cognizance has been taken only under Section 323 I.P.C. In the said divorce case, the complainant did not appear and the divorce suit was decreed in favour of the daughter of petitioner no. 1. The complainant malafide did not mention his relationship with the petitioner. It goes to show that



the complainant has not come with clean hands in the complaint petition. The learned Judicial Magistrate without applying his judicial mind took cognizance against the petitioners.

The learned APP for the State, on the other hand, opposed the submission.

On perusal of record, I find that the complainant is son-in-law of the petitioner no. 1. The daughter of petitioner no. 1 had filed divorce case before the Family Court, Dwarka, New Delhi vide case No. 275 of 2009. The said case was filed on 28.08.2009 and it was decreed on 21.05.2013. The complainant has filed the present case on 05.10.2009, i.e. subsequent to the filing of the aforesaid divorce case. It further appears that the complainant has alleged that the occurrence of assault took place on 20.09.2009, but the present complaint case was filed after 15 days of the alleged occurrence. From impugned order, it further appears that the court below found several contradictions in the statement of witnesses on the point of theft and took cognizance only for the offence under Section 323 I.P.C. The complaint (O.P. No. 2) in spite of his appearance has chosen not to appear before this Court at the time of hearing.

Considering the background of the facts of the case, I am of the opinion that the present prosecution is an abuse of the



process of the Court and hence, the petition is allowed and the order dated 02.01.2010, taking cognizance against the petitioners is hereby quashed.

(Sanjay Kumar, J)

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