

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.45296 of 2011

Arising Out of P.S.Case No. -0 Year- null Thana -null District- NAWADA

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1. Devlal Choudhary S/O Late Karem Choudhary Resident Of Mohalla- Dhania Bagicha, Police Station- Delha, District- Gaya.
 2. Umesh Choudhary S/O Devlal Choudhary Resident Of Mohalla- Dhania Bagicha, Police Station- Delha, District- Gaya.
 3. Dinesh Choudhary S/O Devlal Choudhary Resident Of Mohalla- Dhania Bagicha, Police Station- Delha, District- Gaya.
 4. Naresh Choudhary S/O Devlal Choudhary Resident Of Mohalla- Dhania Bagicha, Police Station- Delha, District- Gaya.
 5. Ganesh Choudhary S/O Devlal Choudhary Resident Of Mohalla- Dhania Bagicha, Police Station- Delha, District- Gaya.
 6. Devanti Devi W/O Devlal Choudhary Resident Of Mohalla- Dhania Bagicha, Police Station- Delha, District- Gaya.
 7. Kunadan Choudhary S/O Dev Nandan Choudhary Resident Of Mohalla- Tulsi Gali Rajgir, Police Station- Rajgir, District- Nalanda
 8. Arvind Choudhary S/O Harihar Choudhary Resident Of - Dhanwa, Police Station- Hasua, District- Nawada.

.... Petitioners

Versus

1. The State Of Bihar
2. Shiv Shankar Choudhary S/O Late Kishun Choudhary Resident Of Village- Panchu Surdhi Tola, Police Station- Hisua, District- Nawada.

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Pramod Kumar, Advocate
For the Opposite Parties : Mr. Akshay Lal Pandit, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 27-07-2017

This application under Section 482 of the Cr.P.C. has been filed to quash the order dated 02.08.2011 passed by the learned Judicial Magistrate, Ist Class, Nawada in Complaint Case No.926 of 2010 wherein and whereunder the learned Magistrate finding prima-facie case for the offence under Sections 323, 341 and 379 of the IPC



summoned the petitioners.

2. Heard Mr. Pramod Kumar, counsel for the petitioners and Mr. Akshay Lal Pandit, APP for the State.

3. The facts in brief is that the Opposite Party No.2 filed a complaint case on the file of CJM against the petitioners who are none-else than his own father-in-law, son-in-laws and relatives of his father-in-law. It has been alleged that on the date of occurrence, they came at his residence and enquired as to why he has sent his wife to Maika. The complainant Opposite Party No.2 refuted and replied that his wife has gone to her Maika to her own desire. He has further alleged that on 26.07.2010 at about 4 .00 O' clock he woke up and saw all the petitioner running away with his belonging and when he raised protest, the petitioners assaulted by fist and slaps. On the alarm of complainant, the local persons assembled and thereafter the petitioners fled away.

4. It has been submitted that the Opposite Party No.2 has filed a complaint case with false and frivolous allegation only to counter the Complaint Case No.1518 of 2008 which has been filed by the daughter of petitioner no.1. The petitioner nos.1 and 2 being the father-in-law and brother-in-law of the complainant are witnesses in the complaint case No.1518 of 2008. Besides that the daughter of petitioner no.1 has filed a Maintenance Case No.34 of 2010 before the



court of Principal Judge, Family Court, Gaya wherein the learned Principal Judge has directed the Opposite Party No.2 to pay an amount of Rs.1600/- per month as interim maintenance. The Opposite Party No.2 did not comply the said order for which distress warrant has been issued against the Opposite Party No.2. It has been further submitted that there are contradictions in the statement of complainant on solemn affirmation and other witnesses recorded at the time of enquiry. The learned court below took cognizance without applying judicial mind and so the impugned order is fit to be quashed.

5. The learned APP opposed the submissions.

6. On perusal of impugned order, complaint petition as well as document available on record, I find that the wife of these petitioners had filed a complaint case no.1518 of 2008 on 06.09.2008 against her husband for the offence under Sections 498A, 379, 323 and other Sections of the IPC. The wife of Opposite Party No.2 was residing at the place of these petitioners. The complainant in the present case has alleged that on the date of occurrence all the petitioners along with others came at the house of Opposite Party No.2 assaulted him and also took away his house hold articles. The complainant in his solemn affirmation at para-5 to the Court question has stated that at 4 A.M. he woke up and found the house hold articles traceless from his house and he had seen the accused (petitioners)



while escaping from his house. The petitioners had slept outside the house on the date of occurrence. He has further stated that the petitioners were not at visiting term at the place of complainant Opposite Party No.2. There are contradictions also in the statement of witnesses. The present case has been lodged after the complaint case of his wife out of vengeance as submitted by learned counsel for the petitioners.

7. In view of the aforesaid facts, the order dated 02.08.2011 passed by Judicial Magistrate, Ist Class, Nawada in Complaint Case No.926 of 2010 is not sustainable and is accordingly quashed. This application is allowed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	01.08.2017
Transmission Date	01.08.2017

