

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.47436 of 2013

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1. Daroga Manjhi, Son of Late Laxman Manjhi
 2. Rita Devi, Wife of Daroga Manjhi
Both 1 and 2 are resident of village- Bishunpura Bazar, P.S. Sidhwalia, District- Gopalganj
 3. Badri Manjhi, Son of Late Nathuni Manjhi
 4. Suganti Devi, Wife of Badri Manjhi
Both 2 and 4 are resident of village- Balhan, P.S. Barauli, District- Gopalganj

.... Petitioners

Versus

1. The State Of Bihar
2. Ajay Prasad Son of Jiut Sah, Resident of Village- Bishunpura Bazar, P.S.- Sidhwalia, District- Gopalganj.

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Javed Aslam, Advocate
For the opposite party : Mr. Nandu Kumar Yadav, Advocate
For the State : Mr. Sunil Kumar Pandey(APP)

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL ORDER

3 02-05-2017 The instant criminal miscellaneous has been filed for quashing the order dated 04.02.2013 passed by Sri Prabal Dutta, J.M. Patna in complaint case no. 2604 (C) of 2011 whereby and whereunder he has found Prima facie case to be made under Sections 341, 323, 379/34 of the Indian Penal Code and ordered to issue summon against Daroga Manjhi, Rita Devi, Badri Manjhi and Suganti Devi. other co-accused named in the complaint petition have not been summoned.

Heard the learned counsel for the petitioners, the



learned A.P.P for the State and the learned counsel for the complainant.

The complaint case No. 2604(c) of 2011 was filed with allegation that the complainant and his brother had a shop at Patrakar Nagar, Patna and they were residing with their family in Patna. On 11.06.2004 Daroga Manjhi had taken Rs. 15,200/- from the complainant and executed a deed of agreement with respect of his land measuring 8 katha in favour of the complainant for 10 years. Further it is alleged that on 11.06.2002 Daroga Manjhi had given four katha land to one Suresh Mahto. At the instance of Daroga Manjhi the complainant gave cash Rs. 2,000/- to Suresh Mahto and got an agreement executed with respect to the said four katha land. The complainant was in possession over the said land for few years. Later on Daroga Manjhi dispossessed from the said land. In the month of September 2010 Daroga Manjhi again took rupees 7,000/- from the complainant and promised to return the said land to the complainant but in conspiracy with his wife and others started to disturb the complainant with a view to grab his money and took possession over the land. Badri Manjhi, his wife Suganti Devi daughter Poonam Kumari son Indu went



to the house of the complainant situated at Gopalganj but they abused and threatened. On 13.09.2011 at 8 P.M., the accused persons came to Patna on the pretext of treatment of Rita Devi. They came to the shop of the complainant and the complainant demanded his money but the accused persons started abusing her and on protest Daroga Manjhi and Badri Manjhi assaulted the complainant and took away cash of Rs. 10,000/- from counter of the shop. Suganti Devi took away the watch of the complainant. Rita Devi snatched his gold chain whereas other co-accused threw bricks resulting glass of the shop was broken. The accused persons fled away taking the pad wherein there was signature of the complainant. After filing of the complaint the complainant was examined on solemn affirmation and in his support two witnesses namely Sanjeet Kumar and Santosh Kumar were also examined under Section 202 Cr.P.C. and thereafter finding prima facie case the learned Magistrate took cognizance under Sections 341, 323, 379/34 of the Indian Penal Code.

Submission is of false implication and that this case is out and out false and concocted. The allegations made therein appears not reliable and probable. This



complaint case has been filed in retaliation of Hazipur SC/ST P.S. Case No. 279 of 2011 under Sections 3(i)(x) SC/ST Act filed by Daroga Manjhi against the complainant and his brothers. The land in question was settled by the State Government in favour of father of Daroga Manjhi but the complainant and his men tried to dispossess Daroga Manjhi over the land. They abused and assaulted Daroga Manjhi and then the matter was reported and case was registered. The major portion of the prosecution case have been disbelieved. It is apparent that there was land dispute between the parties and this case has been lodged with concocted story of theft in the shop. Except two inquiry witnesses non has supported the prosecution case. The inquiry witnesses are the brothers of the complainant. The petitioner no.2 had given birth of a male child on 05.09.2012 in Primary Health Centre Barauli and, as such, it is highly unbelievable that she participated in the alleged occurrence dated 13.09.2011. The instant case is the classic example of malicious prosecution. The nature of the dispute is purely civil in nature. The petitioners have fair antecedent and, as such, the order impugned is fit to be quashed.

The learned A.P.P. and the learned counsel for



the complainant, on the other hand, submit that the learned Magistrate after considering the allegation as made out in the complaint petition and further considering the statement of the complainant on solemn affirmation and the statement of two inquiry witnesses Sanjeet Kumar and Santosh Kumar and also after perusal of Photostat copy of documents has found prima facie case to be made out against the petitioners under Section 341,323, 379/34 of the Indian Penal Code and there is no illegality, incorrectness or impropriety in the impugned order.

The defence of the accused person cannot be looked into at this stage.

Having considered the statement at the Bar, going through the complaint petition, statement of the complainant on solemn affirmation and the statement of two inquiry witnesses Sanjeet Kumar And Santosh Kumar, in my view, also prima facie case under Sections 341, 323, 379/34 of the Indian Penal Code is made out against the petitioners and the learned Magistrate has rightly summoned the four petitioners after exempting other co-accused. The defence of the accused person that petitioner no.2 has given birth of a child etc. can be looked into at the



time of taking cognizance. All these submissions can properly be considered at the time of hearing on the point of charge. At this stage the Court is only required to see as to whether prima facie offence is made out or not to proceed further against the accused persons. The learned Judicial Magistrate has rightly passed the order and there is no illegality, incorrectness or impropriety in the said order.

In the result, the impugned order is hereby confirmed and finding no merit in this criminal miscellaneous, the same is hereby dismissed.

(Jitendra Mohan Sharma, J.)

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