

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.34735 of 2012

Arising Out of PS.Case No. -301 Year- 2009 Thana – Shastri Nagar District- PATNA

- =====
1. Govind Sarawgi @ Laddu Son Of Sri Suresh Sarawgi Resident Of Village And P.S.- Parihar, Dist.- Sitamarhi, Whereas At Present Residing At Mohulla-Bajrang Colony Jagdeo Path, P.S.- Hawaii Adda, Dist.- Patna
 2. Amit Sarawgi @ Pappu Son Of Sri Suresh Sarawgi Resident Of Village And P.S.- Parihar, Dist.- Sitamarhi, Whereas At Present Residing At Mohulla-Bajrang Colony Jagdeo Path, P.S.- Hawaii Adda, Dist.- Patna
 3. Manoj Sarawgi @ Dimpal Son Of Sri Suresh Sarawgi Resident Of Village And P.S.- Parihar, Dist.- Sitamarhi, Whereas At Present Residing At Mohulla-Bajrang Colony Jagdeo Path, P.S.- Hawaii Adda, Dist.- Patna

.... Petitioners

Versus

1. The State Of Bihar
2. Smt. Punam Devi Wife Of Sri Suresh Kumar C/O- Sri Jay Ram Go Swami, Resident Of Mohulla- Murlichak Jagdeo Path, Post Office- V.V. College, Police Station- Hawaii Adda District/ Town- Patna

.... Opposite Parties

=====

Appearance :

For the Petitioner/s	:	Mr. Birendra Sharma Mr. Manish Kumar No. 2
For the Opposite Party No. 2	:	Mr. Rajendra Narayan, Sr. Advocate Mr. Manish Sahay Mr. Anil Kumar Sinha
For the State	:	Mr. Akhileshwar Dayal, APP

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 05-05-2017

Heard the learned counsel for the petitioners as well as the counsel for the Opposite Party No. 2 and APP for the State.

2. The petitioners seek quashing of order dated 16.07.2012 passed by Sessions Judge, Patna in Criminal Revision No. 144 of 2012 whereunder the Sessions Judge refused to set aside the order dated 13.12.2011 passed by Smt. Akanksha Kasyap, Judicial Magistrate, First Class, Patna passed in Shastri Nagar P.S. Case



No. 301 of 2009 (G.R. No. 4037 of 2009). The Magistrate has refused to discharge the petitioners from the offence in question.

3. The facts in brief is that the Opposite Party No. 2 lodged an F.I.R. with S.H.O. of Shartri Nagar Police Station alleging therein that on 06.08.2009 at about 8.30 P.M., she along with her husband was sitting in Shop No. 17, namely, Rajasthan Lahathi Mart, belonging to her son. At the same time, the petitioners entered into her shop and pointed firearm on her. The petitioner No. 1 demanded an amount of Rs. 50,000/- for running the said shop by her son. All the three petitioners assaulted the informant and her husband and snatched gold chain from her possession. They further took an amount of Rs. 3,000/- or 4,000/- from the cash counter of her son. A police case bearing Shastri Nagar P.S. Case No. 301 of 2009 was registered and after investigation, police submitted report on the basis of which cognizance of offence was taken against the petitioners. After cognizance, the petitioners filed petition to discharge them from the offence in question which was rejected by the Magistrate. The said order was challenged under revisional jurisdiction which was also dismissed as per impugned order.

4. The counsel for the petitioners submits that the learned Magistrate has passed the impugned order in a mechanical manner.



There is absolutely no material in the case diary to frame charges against them. The impugned order does not disclose the material attracting the offence in question. The petitioners challenged the said order before the learned Sessions Judge, Patna by filing Criminal Revision No. 144 of 2012. The learned Sessions Judge without appreciating the submission made on behalf of the petitioners, rejected the revision at the admission stage.

5. The counsel for the Opposite Party No. 2 opposed the submission by submitting that there are sufficient materials in the case diary constituting the offence under Sections 341, 323 and 504/34 of the Indian Penal Code. The Magistrate took cognizance of offence under the aforesaid sections, which was challenged by the petitioners by filing Criminal Miscellaneous No. 4519 of 2012. The said criminal miscellaneous was dismissed by one of the coordinate Bench of this Court as per order dated 15.02.2012. The Magistrate finding sufficient materials in the case diary refused to discharge the petitioners and directed them to appear for framing of charges. The said order was challenged before the Sessions Judge and it was dismissed after hearing and perusing the materials available on records.

6. On going through the submissions of both the parties and also on perusal of impugned order and documents available on record, I find that there is specific allegation against the petitioners



that they all entered into the shop of the informant and assaulted her and her husband by fist and slap and took chain from her neck. It further appears that the Magistrate finding prima facie case took cognizance of offence under Sections 341, 323 and 504/34 of the Indian Penal Code against all the petitioners. The said order was challenged by filing Criminal Revision No. 144 of 2012. From perusal of the order of Sessions Judge passed in Criminal Revision No. 144 of 2012, it appears that the Sessions Judge perused the case diary and being satisfied with the materials against the petitioners dismissed the revision. The learned Sessions Judge has referred paragraph nos. 10 to 13 of the case diary wherein some of the witnesses, who are constables and were posted at the place of occurrence, have also supported the allegation of assault.

7. Considering the submissions made at Bar and also the materials available on record, I do not find any merit in the present application. Accordingly, this application is dismissed.

(Sanjay Kumar, J)

ajaypd./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	09.05.2017
Transmission Date	09.05.2017

