

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.35303 of 2013

Arising Out of PS.Case No. -1159 Year- 2012 Thana -PATNA COMPLAINT CASE District-
PATNA

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1. Md. Murtaza Khan S/O Late Hazi Md. Sazzad Khan Resident Of
Mohalla- Ali Nagar Colony, B/164/B Anisabad, Police Station-
Gardanibagh, District- Patna.

2. Kausar Praveen W/O Syed Neayz Ahmad, D/O Md. Murtaza Khan
Resident Of Mohalla- Ali Nagar Colony, B/164/B Anisabad, Police Station-
Gardanibagh, District- Patna.

.... Petitioner/s

Versus

1. The State Of Bihar

2. Raushan Khanam W/O Aftav Alam Resident Of Mohalla- Ali Nagar
Colony, B/164/A Anisabad, Police Station- Gardanibagh, District- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Parashuram Singh
For the Opposite Party/s : Mr. Suresh Pd.Singh (App)
For the informant : Mr. Anil Kumar Saxena.
Mr. Shabbir Ahmad

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

4 19-01-2017 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 12.02.2013 passed by Smt. Rashmi,
Judicial Magistrate-1st Class, Patna in Complaint Case No.
1159(C) of 2012, by which the learned Magistrate found *prima*
facie case under Section 341, 323 and 379 of Indian Penal Code,
ordered for issuance of processes against the petitioner.

Case of the prosecution in short is that the complainant is



the daughter-in-law of petitioner no. 1 and sister-in-law of petitioner no. 2. The complainant was married with Aftab Alam, son of petitioner no. 1, sixteen years ago in accordance with Muslim rites and rituals. At the time of marriage she got household articles along with ornaments from her parents, which valued Rs. 5,00,000/-. (Rs. Five Lakh). It has been stated that in the life of her mother-in-law, she was living happily with her husband but after the death of her mother-in-law, the accused persons started to torture her physically and mentally as her husband is in police department, posted outside Patna and in his absence, the accused persons came to the house of the complainant and used to cut comments against her and threatened to kill her. Further case of the prosecution is that on 28.04.2012 at about 2. P.M., accused persons entered into the house of the complainant and thrashed her on bed and tried to strangle her and also snatched a chain and earring.

On the basis of the aforesaid, Complaint Case No. 1159(C) of 2012 came to be registered against the petitioners, which was sent for enquiry and disposal to Smt. Rashmi, learned Judicial Magistrate -1st Class, Patna, who after enquiry under Section 202 of Cr.P.C., found *prima facie* case against the petitioner under Section 341, 323 and 379 of Indian Penal Code



and, accordingly, ordered for issuance of processes, vide order dated 12.02.2013, which is under challenge in the present application.

It has been submitted on behalf of the petitioners that petitioner no. 1 is the father in law and petitioner no. 2 is sister-in-law of the complainant and they have been falsely implicated in this case at the instance of greedy attitude of the complainant and her husband, who wanted to grab the land and house of the petitioners. As a matter of fact petitioner no. 1 had purchased a 1207 Sq. ft. land in the name of his wife, namely, Atiqua Khatoon by a registered sale deed dated 02.03.1996 and, thereafter, constructed a house on the said land but his son, namely, Aftab Alam @ Samsad Ahmad Khan committed fraud by preparing a forged gift deed in his name with a view to grab the land and house of the petitioners. When this fact came to the knowledge of the wife of petitioner no. 1, she sworn an affidavit before Executive Magistrate Sadar, Patna, mentioning the aforesaid forged action of her son Aftab Alam @ Samsad Ahmad Khan. Later on a legal notice was also sent to opposite party no. 2 and her husband by Atiqua Khatoon, wife of the petitioner no. 1, for torturing her and her husband and her two daughters to leave the house. She had also submitted an application to the Municipal



Corporation, praying therein to reject the prayer of mutation of plot no. B/164A in the name of her son Aftab Alam @ Samsad Ahmad Khan. An information petition was also filed by the Atiqua Khatoon before the court of Chief Judicial Magistrate, Patna that her son in connivance with the complainant and her father has fraudulently prepared a forged gift deed in his name and forcibly threw her, her husband and her two daughters out of the house. The said fact was also communicated to Chief Minister's Secretariat and later on the basis of direction issued by the Chief Minister's Secretariat, the said fact was examined by the Inspector, who in his report also confirmed the grievances of the petitioners to be true. It has also been submitted that the present case is out and out a false, malicious and malafide proceeding as it has been lodged only with an intention to grab the land and house of the petitioners and to humiliate them. However ignoring these facts, learned Magistrate has taken cognizance against the petitioners on a false and concocted case filed by the complainant, which is not sustainable in the eye of law and deserves to be quashed.

Heard learned counsel for the State and learned counsel appearing on behalf of complainant. It has been submitted by them that the complaint petition itself shows that there are allegations



against the petitioners for making offence under Sections 323, 341 and 379 of the Indian Penal Code and after considering the aforesaid allegation as well as materials collected during the course of enquiry, the learned Magistrate has *prima facie* found the case against the petitioners and, accordingly, ordered for issuance of process. It has further been submitted that it is well settled principle of law that when there are consistent evidences available on record to show a *prima facie* case against the petitioners, the same cannot be overlooked only on the ground that cases are going on between the parties, as such there is no merit in the present case and is fit to be dismissed.

Heard both sides, perused the complaint petition and other materials available on record. In the complaint petition, there is direct allegation that the petitioners entered into the house of the complainant and assaulted her and on the instance of petitioner no. 1, they tried to strangle the complainant and also snatched chain and earring, valued about Rs. 55,000/- (Rs. Fifty Five Thousand) and as such from perusal of the complaint petition itself, it appears that there are materials under Section 323, 341 and 379 available on the record and the learned Magistrate after perusal of the complaint petition as well as statement of the complainant recorded on oath and evidence of enquiry witnesses



under Section 202 of the Cr.P.C. found a *prima facie* case against the petitioners under Section 341, 323 and 379 of the Indian Penal Code and not found the *prima facie* case under Section 307, 498A, 406 and 120B of the Indian Penal Code, as such it cannot be said that the learned Court below has passed the order in a mechanical manner rather he has passed the order after perusal of the materials available on record. Further so far as contention of the petitioner that it is out and out a malicious and malafide proceeding instituted only with the intention to grab the land and house of the petitioners, is concerned, the same cannot be considered at present as the genuineness of the same can only be tested at the time of Trial.

Considering the discussions above, I find no merit in the present application filed by the petitioners; accordingly, the same is hereby dismissed.

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(Vinod Kumar Sinha, J)

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