

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.40406 of 2013

Arising Out of PS.Case No. -9 Year- 2011 Thana -BHOJPUR COMPLAINT CASE District-
BHOJPUR

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Kishun Prasad Singh, son of Late Nawab Singh, resident of village- Aniath, P.S.
Ara Nawada, District- Bhojpur

.... Petitioner/s

Versus

1. The State of Bihar
 2. Birendra Prasad Singh, s/o late Laxman Singh
 3. Yogendra Prasad Singh, s/o late Laxman Singh
 4. Harendra Kumar Singh, s/o late Laxman Singh
 5. Gita Devi, w/o Sri Birendra Prasad Singh
 6. Phul Kumari Devi, w/o Sri Yogendra Prasad Singh,
 7. Gudia, w/o Harendra Kumar Singh
- All Resident Of Village- Aniath, P.S. Ara Nawada, District- Bhojpur

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. R. Kumar, Advocate.
Mr. Rakesh Kumar, Advocate.

For the informant : Mr. Rajendra Nath Sinha, Advocate
Mr. Arvind Kumar Sinha, Advocate.

For the Opposite Party/s : Ms. Pushpa Sinha, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 06-03-2018

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 20.05.2013 passed by Sri Ashutosh Kumar, learned Judicial Magistrate, 1st Class, Bhojpur, Ara, in Complaint Case No. 09C of 2011 by which the learned Magistrate has dismissed the complaint petition under Section 203 Cr. P.C. filed by the petitioner.

2. The complainant has filed complaint before the court of learned Chief Judicial Magistrate, Bhojpur, Ara, alleging that



on 31.12.2010 at 10:30 a.m. he had gone to Mohalla Gandhi Nagar near Katira and in the house only witnesses No. 1, 2 and 3 as mentioned in the complaint petition were present. All the accused persons started abusing his elder daughter-in-law and pushed her down. The complainant in the meantime arrived and saw the accused persons assaulting his daughter-in-law with leg, fist in the house and co-accused Harender Kumar Singh snatched golden chain of his daughter-in-law. It is also alleged that all these petitioners were having sharp weapons in their hands. They broke the door of eastern side of the house of the informant and took away valuable worth Rs.4,000/-. It is also alleged that complainant and accused persons are co-sharer.

3. The learned Magistrate has after recording Solemn Affirmation of the complainant and statement of other witnesses, dismissed the complaint under Section 203 Cr. P.C. by order dated 18.09.2012. The petitioners preferred Criminal Revision 117 of 2012 which was allowed by learned Sessions Judge vide order dated 7.2.2013 by which the order passed by the learned Magistrate dated 18.09.2012 was set aside. The learned Magistrate was directed to proceed further in accordance with law.

4. The learned Magistrate has thereafter passed fresh order in compliance of direction of learned Sessions Judge in Criminal Revision No. 117 of 2012. The learned Magistrate has again



dismissed the complaint under Section 203 Cr. P.C. after obtaining report from Nawada Police Station under Section 202 Cr. P.C. pertaining to veracity of the complaint case No. 9 (C) of 2001.

5. Heard learned counsel for the petitioners, learned counsel for the complainant and learned counsel for the State.

6. Learned counsel for the petitioners has submitted that the Magistrate has committed illegality. He has first started enquiry in the matter himself. Therefore, he has no jurisdiction to obtain report from the Investigating Officer after setting aside of his earlier order by learned Sessions Judge. It has further been submitted that learned Magistrate has no jurisdiction to partly enquire into the matter himself and get the matter partly investigated by the police.

7. Learned counsel for the petitioners has relied upon a decision reported in *1981 Criminal Law Journal 1002 (Sankar Chandra Ghose Vrs. Roopraj S. Bhansally), AIR 1980 SC 1780 (Kewal Krishan Vrs. Suraj Bhan and another) and AIR 1928 Lahore 88 (Jaginder Singh Vrs. Agha Safdar Ali Khan)* in support of the aforesaid proposition.

8. Learned counsel for the complainant has appeared and submitted that no illegality has been committed by the learned Magistrate. The learned Magistrate has during enquiry under Section 202 Cr. P.C., power to get the matter investigated by the police, provided that the offence complained of is not triable by Court of



Session.

9. Learned A.P.P. has submitted that there is no illegality in the impugned order.

10. This Court after hearing submission of all the parties, finds that main question of law involved in this case is whether after setting aside the earlier order of the learned Magistrate by the learned Sessions Judge in revision, directing the Magistrate to proceed in the matter in accordance with law, the Magistrate committed illegality in passing the impugned order dated 20.05.2013 on the basis of report submitted by Nawada Police Station under Section 202 Cr. P.C.

11. In this respect, the Provision of Section 202 (1) Cr. P.C. is quoted below:

“Any Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance or which has been made over to him under Section 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused, and either enquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be



made, -

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under Section 200.

12. The learned Magistrate is therefore under aforesaid provision of law may postpone issue of process against the accused and either enquire into the case himself or direct an investigation to be made by the Police Officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding provided the offence complained is not exclusively triable by the court of Session.

13. The learned Sessions Judge by order dated 7.2.2013 has set aside the order of learned Magistrate and directed the Magistrate to proceed further in accordance with law.

14. The learned Magistrate thereafter proceeded in the matter under Section 202 Cr. P.C. and sought report from the Nawada Police pertaining to veracity of the complainant case. The learned Magistrate after receiving the report from the Nawada Police, dismissed the complaint under Section 203 Cr. P.C. after relying on the aforesaid report.

15. Learned counsel for the opposite party No. 2



(complainant) has relied upon a decision of Division Bench of this Court reported in **1985(1) PLJR page 973 (Parasuram Jha Vrs. State of Bihar & Ors.)** wherein the Hon'ble Court has held that in view of language of section 202 Cr. P.C. even after directing the officer-in-charge of the local Police Station to make an inquiry and report the hands of the learned Magistrate would not be tied if he proposed to hold further enquiry into the matter himself. But if he holds further enquiry by himself or for determining whether to issue process or not, it will be within his competene and procedure.

16. Therefore, this Court does not find any illegality in the impugned order.

17. This Criminal Miscellaneous application is accordingly dismissed.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	N.A
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