

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.35927 of 2012

Arising Out of PS.Case No. -729 Year- 2011 Thana -null District- MADHEPURA

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1. Jamunadhar Mishra, s/o late Hari Ballabh Mishra,
 2. Devanand Mishra,
 3. Mahanand Mishra, both are sons of late Mahendra Mishra,
 4. Dinesh Mishra, s/o Kulanand Jha,
 5. Roop Narayan Jha, s/o late Chaturanand Jha,
 6. Palat Jha @ Ramakant Jha, s/o Teju Jha,
 7. Dharendra Mishra @ Dharendra Jha, s/o late Nagendra Mishra,
 8. Visheshwar Jha @ Mishri Jha, s/o late Maheshwar Jha, all resident of village- Tharbitia, Police Station- Phulparas, District- Madhubani

.... Petitioner/s

Versus

1. The State of Bihar,
2. Anand Mishra, s/o Satanjiv Mishra, resident of village- Tharbitia, Police Station- Phulparas, District- Madhubani

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Raj Kumar, Advocate
Mr. Ratnakar Jha, Advocate
For the Opposite Party No.1: Mr. Anil Kumar Singh, APP
For the Opposite Party No.2: Mr. Kameshwar Pd. Gupta, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 02-02-2018

1. This application (Cr. Misc. No.35927 of 2012) was heard along with Cr. Misc. No.34851 of 2012 and the order was kept reserved. From perusal of the impugned order passed in both the cases, it appears that orders have been passed on the basis of the complaint lodged by different complainant with different cause of action. Therefore, judgments are delivered in both the cases separately.



2. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 26.06.2012 passed by the Judicial Magistrate, 1st class, Jhanjharpur, in C. R. No.729 of 2011/ Tr. No.2365 of 2012 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioners for the offence under Section(s) 323, 341, 379, 504/34 Indian Penal Code.

3. Complaint case has been filed by Complainant Anand Mishra alleging, therein, that he is Secretary of *Maa Jagat Dhatri Durga Puja Samittee*. On the occasion of *Chhath* festival, idol of Maa Durga was being made by the Sculptor at the *Durga Asthan*. The Complainant along with other members of the *Samiti* had gone to see the progress of work and thereafter he was discussing about the programme. In the meantime, accused nos.4, 6 and 9 came there and accused no.4 demanded rupees three thousand as heavy collections have been made in the *Puja* upon which Complainant refused to give any money. Thereafter, accused nos.4, 6 and 9 caught hold the Complainant. Other accused persons also reached there in the meanwhile. Accused no.2 put a *Gamcha* around the neck of the Complainant and pulled him down. Accused nos. 6 and 9 took out revolver and asked to hand over all the money. Accused no.4 took out rupees ten thousand from the pocket of the



Complainant, accused no.6 snatched Titan Watch of the Complainant. Accused no.2 obtained signature of the Complainant on four plain papers.

4. The Court below after holding enquiry has found *prima facie* case against all the petitioners for the offence under Section(s) 323, 341, 379, 504/34 Indian Penal Code.

5. Counsel for the petitioners has submitted that besides the present complaint, father of the Complainant has filed Complaint Case No.804 of 2011 in which learned Magistrate has found *prima facie* case against the petitioners for the offence under Section(s) 323, 380, 448 Indian Penal Code. Manoj Mishra has filed another case vide Complaint Case No.194 of 2012 against the petitioners, which is annexed as Annexure-4.

6. Counsel for the Opposite Party No.2 has submitted that in all these Complaint Petitions, Complainants are different and cause of action is also different. Petitioners have committed different overt act as mentioned, in detail, in other Complaint Petitions for which separate Complaint Petitions have been filed against the petitioners. The counsel for the petitioners has submitted that impugned order will not become illegal merely because other complaints are also filed against the petitioners by the family members of the Complainant.



7. Learned APP has submitted that there is no illegality in the impugned order.

8. From perusal of the impugned order, it appears that the Court below on the basis of the allegation made in the Complaint Petition as well as statement of the witnesses recorded during enquiry has found *prima facie* case against the petitioners-accused persons for the offence under Section(s) 323, 341, 379, 504/34 Indian Penal Code.

9. This Court is of the view that merely because of filing of other complaint case against the petitioners for different cause of action by other family members of the Complainant, the impugned order cannot be declared to be illegal. Learned Magistrate after holding proper enquiry on the basis of the allegation made in the complaint, statement of witnesses recorded during enquiry including Solemn Affirmation of the Complainant has found *prima facie* against the petitioners.

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

11. The application is, accordingly, dismissed.

12. However, petitioners are given liberty to raise all the points as raised in the present application at the time of framing of Charge, which shall be considered and disposed off by the



learned Court below in accordance with law without being prejudiced by this order.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	11-12-2017
Uploading Date	03-02-2018
Transmission Date	03-02-2018

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