

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.16539 of 2014

Arising Out of PS. Case No.-1004 Year-2012 Thana- COMPLAINT CASE District- Supaul

1. Prabhash Mishra @ Chiku Mishra S/O Late Bhola Mishra
 2. Shyam Chandra Mishra S/O Bhola Mishra
 3. Manchu Mishra S/O Late Bhola Mishra
 4. Prema Devi S/O Late Bhola Mishra
 5. Kumari Thakur S/O Boya Thakur
- All R/O Village Veena Babhangama, P.S. Supaul, District Supaul.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Durganand Jha S/o Late Kashi Nath Jha R/o Village Veena Babhangama, P.S. Supaul, District Supaul.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Karuna Kant Jha, Advocate
For the State	:	Mr. Dr. M. N. Jha, Advocate
For the Opposite Party/s	:	Mr. Amarnath Yadav, Advocate
		Mr. Kuldeep Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 21-12-2018

Heard learned counsel for the petitioners and learned
A.P.P. for the State.

2. Despite opposite party no. 2 having entered
appearance and name of counsel also appearing in the cause list,
nobody was present when the matter was taken up and heard.

3. The petitioners have moved the Court under Section
482 of the Code of Criminal Procedure, 1973 for the following
relief:

*“That this application is being filed
for quashing of criminal proceeding arising out*



of order of cognizance dated 19.09.2013 passed in Complaint Case No. 1004C/12, by Sri M. Kumar learned J.M. 1st Class, Supaul by which the learned Magistrate has taken cognizance against the petitioners under Section 323, 379 of Indian Penal Code.”

4. The opposite party no. 2 in the complaint has alleged that on 03.09.2012 at 8.00 A.M., petitioner no. 2 had come to his house seeking loan of Rs. 10,000/- for purchasing cow which was refused on the ground that the opposite party no. 2 was saving money for treatment of his wife. It was alleged that at about 9.00 P.M., on the same day, when the opposite party no. 2 along with his son was proceeding towards his in-laws place on bicycle, the accused, who were armed with *lathi*, *phathha*, *dabia* and guns etc. forcibly took away Rs. 1,500/- from the pocket of the opposite party no. 2 and snatched his watch and also a gold ring and threatened not to disclose the fact to anybody and when the opposite party no. 2 went to the house, the petitioners no. 4 and 5 are said to have also assaulted them.

5. Learned counsel for the petitioners submitted that the entire story in the complaint is absurd and improbable. It was submitted that the petitioner no. 1, much prior to filing of the present complaint on 03.09.2012 had written to the Gram Panchayat with regard to causing fire by the opposite party no. 2



and also of him threatening to kill the petitioner no. 1. Learned counsel submitted that due to the aforesaid, the present case has been filed as a counter blast. It was further submitted that even thereafter, prior to the present complaint case on 11.09.2012, the petitioner no. 1 had also filed Supaul P.S. Case No. 494 of 2012 against the opposite party no. 2 alleging that he had threatened him to withdraw the complaint filed regarding causing fire and also of taking away of Rs. 5,000/-. Learned counsel submitted that in the aforesaid background, it is highly improbable and in fact false and no prudent man would believe that petitioner no. 1 would still go to the house of opposite party no. 2 to ask for any loan. Learned counsel further submitted that they have also filed Supaul P.S. Case No. 607 of 2012 on 29.11.2012, against the opposite party no. 2 alleging snatching of mobile worth Rs. 8,000/-, gold ring and also Rs. 10,000/- from his brother.

6. Learned A.P.P. and learned counsel for opposite party no. 2 submitted that the incident had occurred and in fact even the F.I.R. of the petitioner no. 1 relates to the same day i.e., 03.09.2012 and, thus, the occurrence being of that date, the veracity of the allegation cannot be doubted. It was further pointed out that even subsequently, the opposite party no. 2 had also filed Supaul P.S. Case No. 608 of 2012, against petitioner no. 1 and



others. At this juncture, when the Court put a direct query to opposite party no. 2 as to how come no case was registered soon after the incident and there was a gap of 21 days in filing of the complaint and further as to why criminal case filed by the opposite party no. 2 against petitioner no. 1 and others was subsequent to them filing Supaul P.S. Case No. 607 of 2012, as also as to whether it should be believed that a person who has already filed complaint alleging serious criminal offences against the opposite party no. 2 would go to his house and ask for loan, learned counsel was unable to give any reply.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out. The narration of the incident in the complaint petition, in the background of past enmity between the parties, especially keeping in mind the fact that seven months prior to the incident, the petitioner no. 1 had made a complaint with regard to the opposite party no. 2 causing fire and also of giving him life threatening, it is difficult to believe and highly improbable that the petitioner no. 1 would still go to the house of the opposite party no. 2 for a loan of Rs. 10,000/-. Moreover, as has been submitted by learned counsel for the petitioners that petitioner no. 4, who is the mother of the petitioner



no. 1 and is aged 82 years, though the age mentioned in the complaint is 48 years, itself shows that the complaint case has been filed with ulterior motive and does not reflect any true incident. Thus, letting the same proceed would be an abuse of the process of the Court.

8. For the reasons aforesaid, the application stands allowed. The order impugned dated 19.09.2013 passed in Complaint Case No. 1004C of 2012 by the Judicial Magistrate, 1st Class, Supaul taking cognizance against the petitioners under Sections 323 and 379 of the Indian Penal Code is quashed.

(Ahsanuddin Amanullah, J)

P. Kumar

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