

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.46455 of 2014

Arising Out of PS.Case No. -315 Year- 2012 Thana -CIVIL LINE District- GAYA

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Hem Nath Ojha, son of late Dev Deni Ojha, resident of Brahmni Ghat, P.S. - Civil Lines, District- Gaya.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Deepak Tiwari, son of Ramji Tiwary, resident of Mohalla- Brahmni Ghat, Acharya Dera, Police Station - Civil Lines, District - Gaya.

.... Opposite Party/s

With

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Criminal Miscellaneous No. 49224 of 2014

Arising Out of PS.Case No. -315 Year- 2012 Thana -CIVIL LINE District- GAYA

- =====
1. Ahiliya Devi, W/o Hem Nath Ojha,
 2. Putul Kumari,
 3. Arti Kumari, both D/o Hem Nath Ojha,
 4. Vivek Kumar Ojha,
 5. Laxuman Kumar Ojha, both sons of Hem Nath Ojha,
 6. Sidh Nath Baidya, S/o Late Namhak Baidhya,
 7. Malti Devi, W/o Sidh Nath Baidhya,
 8. Mukesh Baidhya, S/o Sidh Nath Baidhya,
 9. Sonam Kumari, D/o Sidh Nath Baidhya, all resident of Brahmni Ghat, P.S. - Civil Lines, District - Gaya

.... Petitioner/s

Versus

1. The State of Bihar,
2. Deepak Tiwari, son of Ramji Tiwary, resident of Mohalla- Brahmni Ghat, Acharya Dera, Police Station - Civil Lines, District - Gaya.

.... Opposite Party/s

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Appearance :

(In Cr.Misc. No.46455 of 2014)

For the Petitioner/s : Mr. Sanjay Kumar, Advocate

For the Opposite Party No.1: Ms. Sangeeta Sharma, APP

For the Opposite Party No.2: Mr. Ajay Kumar Sinha, Advocate

(In Cr.Misc. No.49224 of 2014)

For the Petitioner/s : Mr. Mukul Prasad, Advocate

For the Opposite Party No.1: Mr. Bharat Bhushan, APP

For the Opposite Party No.2: Mr. Ajay Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA



CAV JUDGMENT

Date: 06-10-2018

Both the applications are taken up together as they arise out of the same P.S. Case.

2. These applications under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 12.06.2014 passed by the Chief Judicial Magistrate, Gaya, in Civil Lines P.S. Case No.315 of 2012 (GR No.3391 of 2012) by which the learned Magistrate has taken cognizance against the Petitioners for the offence under Section(s) 341, 323, 504/34 Indian Penal Code.

3. The prosecution case, in short, is that on the date of occurrence drainage and street was being constructed in Mohalla of the Informant under scheme of PWD (NH). At about 8.00 AM, the Petitioners along with family members and other accused persons arrived there and stopped the construction of drainage. The Contractor, Engineer and other residents of Mohalla were also present there. They forbade the Petitioners and others from doing so. They tried to start construction work upon which, Laxman Ojha, started using filthy language. The resident of Mohalla came and tried to convince them. The Informant and officials of PWD also persuaded the Petitioners and his family members, then these Petitioners came to the house of the Informant and started breaking his door and also started abusing the female members of the house



and gave threat to kill them by fire arm. It is also alleged that the accused persons assaulted the Informant with fist and slap. The Informant fell down and sustained injury in his right hand. He was saved by the neighbourers. Petitioner, Hem Nath Ojha, snatched Titan Watch and Laxuman Ojha took away Rs.1600/- from the pocket of the Informant. Mohalla people tried to catch hold the accused, but they managed to run away. The Informant has further alleged that he has filed Complaint Case against Hem Nath Ojha and others, which is at the final stage. It is alleged that these Petitioners have committed *Maarpeet* to put pressure upon the Complainant. The Informant received information from the Police Station that accused persons have also abused family members of neighbour Subodh. It is also alleged that wife of Hem Nath Ojha, his both daughters, Sidh nath Vaidya, his wife and daughter have also participated in the crime.

4. The police after investigation submitted charge-sheet against the accused persons as named in the written report. Learned Magistrate has taken cognizance against all the accused persons under Section(s) 341, 323, 504/34 Indian Penal Code.

5. A report with regard to present of the case was called for from the Court below, which has been received, from which it appears that the case is pending for framing of Charge.



6. Counsel for the Petitioners has submitted that instant case has been filed due to enmity. Falsity of the prosecution case would be apparent from the fact that son-in-law of the Petitioner, Hem Nath Ojha, (Cr. Misc. No.46455 of 2016) whose name is not known to the Informant, has also been made accused in this case. It has also been submitted that other family members of Petitioner, Hem Nath Ojha, (Cr. Misc. No.46455 of 2016), who are family members of son-in-law of the Petitioner, Hem Nath Ojha, and not known to the Informant as well as his other family members have been made accused although they were not present at the place of occurrence. No complaint was filed by any government official for causing obstruction in official work. Petitioner, Hem Nath Ojha, has filed Civil Lines P.S. Case No.314 of 2012 on 24.08.2012 against the Informant and others. Instant case has been filed by the Informant only to put pressure when Petitioner, Hem Nath Ojha, has filed Civil Lines P.S. Case No.314 of 2012 against the Informant and others.

7. Counsel for the State as well as Opposite Party No.2 has submitted that there is direct allegation against the Petitioners in the written report. The police after investigation has found the case true. The Court below after looking into the materials in the case diary has taken cognizance against the Petitioners.

8. This Court after hearing counsel for both the



parties and looking into the allegation in the written report finds that there is allegation in the written report that on the date of occurrence Hem Nath Ojha, Laxman Ojha, Vivek Ojha, son-in-law of Hem Nath Ojha whose father's name not known, Sidhnath Vaidya, Mukesh Kumar Vaidya and other two persons, whose name is not known, arrived and stopped construction work of drainage. The Engineer of PWD and Contractor were also present there along with Mohalla people. They tried to persuade Hem Nath Ojha and others to not obstruct the construction work then Hem Nath Ojha abused and came to the door of the Informant and started abusing the family members. Hem Nath Ojha took away Titan watch and Laxman Ojha took out Rs.1600/- from the pocket of the Informant. It is alleged in the written report that Informant has earlier filed complaint against Hem Nath Ojha and others, which is at the final stage.

9. The police after investigation has submitted charge-sheet against eleven persons. The Court below has taken cognizance against all the eleven persons as named in the charge-sheet.

10. This Court after looking into allegation in the written report and the materials in the case diary does not find any allegation of overt act against Petitioner Nos.1 to 3 and 6 to 9 of Cr. Misc. No.49224 of 2014.



11. In view of such, impugned order dated 12.06.2014 passed by the Chief Judicial Magistrate, Gaya, in Civil Lines P.S. Case No.315 of 2012 with regard to Petitioner Nos.1 to 3 and 6 to 9 of Cr. Misc. No.49224 of 2014 is hereby quashed.

12. This Court does not find any illegality in the impugned order with regard to Petitioner, Hem Nath Ojha, of Cr. Misc.No.46455 of 2014 and Petitioner Nos.4 and 5, Vivek Ojha and Laxuman Ojha, of Cr. Misc.No.49224 of 2014.

13. Accordingly, Cr. Misc.No.46455 of 2014 is dismissed and Cr. Misc.No.49224 of 2014 is allowed in part.

14. The Court below will proceed in the case in accordance with law with respect to Petitioner, Hem Nath Ojha, petitioner of Cr. Misc.No.46455 of 2014 and Petitioner Nos.4 and 5, Vivek Ojha and Laxuman Ojha, of Cr. Misc.No.49224 of 2014.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	NAFR
CAV DATE	07-08-2018
Uploading Date	07-10-2018
Transmission Date	07-10-2018

