

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.14679 of 2016

Arising Out of PS.Case No. -1456 Year- 2015 Thana -VAISALI COMPLAINT CASE District -
VAISHALI(HAJIPUR)

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1. Ashok Rai, son of Jai Narain Rai, resident of village- Tazpur, P.S.-Mahua,
District - Vaishali

.... Petitioner/s

Versus

1. The State of Bihar,
2. Subodh Rai, son of Phudeni Rai, resident of village- Tazpur Bujurg, P.S.-
Mahua, District - Vaishali

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Nachiketa Jha, Advocate

For the Opposite Party/s : Mr. M. K. Nirala, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 10-08-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 14.09.2015 passed by the Judicial Magistrate, 1st class, Vaishali at Hajipur, in Complaint Case No.C1-1456 of 2015 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioner for the offence under Section(s) 323/34 Indian Penal Code.

Heard learned counsel for the petitioner and learned APP for the State. Although name of the counsel for the Opposite Party No.2 is appearing in daily Cause List, but none appeared on behalf of the Opposite Party No.2.



Counsel for the petitioner submits that petitioner was not present at the place of occurrence on the alleged date and time of occurrence. He was posted at Katra, Jammu & Kashmir in CRPF and for that the petitioner informed his Commandant about false implication by his agnate while he was on duty. The Commandant of 06 Battalion CRPF wrote a letter on 25.01.2006 to the District Magistrate, Vaishali, and sent letters to the Superintendent of Police, Vaishali, and SHO, Mahua, Vaishali, about the alleged false implication of the petitioner in the instant case filed by the Complainant. Aforesaid letter dated 25.01.2016 along with attendance page of May, 2015 is annexed as Annexure-2 series.

Counsel for the petitioner further submits that there is allegation of snatching golden chain against the petitioner. But the learned Magistrate has not found *prima facie* case for the offence under Section 379 Indian Penal Code after enquiry.

In the Complaint Petition, it is alleged that on the date of the occurrence the accused persons were fixing pillar in the land, which was objected by the Complainant. It is alleged that accused persons came at the door of Complainant armed with *lathi*, *Danda* and *Khurpi* and started assaulting him with fists, slaps, *danda*. The father of Complainant went to save him then he was also assaulted by *Khurpi* on the left toe by Sone Lal Rai. The wife of



Complainant, namely, Lalti Devi, went to save him, then she was also assaulted by the accused persons with fists and slaps. It is alleged against this petitioner that he snatched golden chain from possession of wife of the Complainant. The accused persons entered into the house of the Complainant and took away briefcase containing cash, ornaments etc.

Counsel for the petitioner submits that from the Complaint Petition itself it is apparent that instant case has been filed due to land dispute between the parties. There is no specific allegation against the petitioner of committing assault to the Complainant or his family members in the entire complaint. He has been falsely implicated in this case to harass him. He was posted on the date of occurrence in Katra, Jammu & Kashmir, in CRPF, which is apparent from Annexure-2.

The learned Magistrate after looking into Solemn Affirmation of the Complainant and statement of the witnesses has found *prima facie* case under Section(s) 323/34 Indian Penal Code against the petitioner and other accused persons. There is no specific allegation of assault against this petitioner in the Complaint Petition or in the Solemn Affirmation of the Complainant. The allegation against petitioner in the Complaint Petition is of snatching chain from possession of wife of Complainant. The Court



below has not found *prima facie* case for the offence under Section 379 Indian Penal Code after enquiry.

Therefore, the impugned order passed by the learned Court below with regard to Petitioner is not in accordance with law.

Accordingly, the impugned order dated 14.09.2015 passed by the Judicial Magistrate, 1st class, Vaishali at Hajipur, in Complaint Case No.C1-1456 of 2015 along with entire criminal proceeding against the petitioner is hereby quashed.

This application is hereby **allowed**.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	18-08-2018
Transmission Date	18-08-2018

