

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.7144 of 2011

Arising Out of PS.Case No. -83 Year- 2010 Thana -null District- BHOJPUR

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1. Ramji Tiwary S/O Sri Kedar Tiwary Resident Of Village- Bariswan, Police Station- Shahpur, District- Bhojpur

2. Raju Tiwary S/O Ramji Tiwary Resident Of Village- Bariswan, Police Station- Shahpur, District- Bhojpur

3. Manoj Tiwary @ Santosh Tiwary S/O Ramji Tiwary Resident Of Village- Bariswan, Police Station- Shahpur, District- Bhojpur Petitioner/s

Versus

1. The State Of Bihar

2. Gauri Shankar Sharma S/O Late Harihar Sharma Resident Of Village- Bariswan, Police Station- Shahpur, District- Bhojpur Opposite Party/s

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 10-05-2018

Heard learned counsel for the petitioners and learned APP for the State.

2. None appeared on behalf of O.P. No. 2 although notice has been served.

3. This application has been filed for quashing the order dated 07.12.2010 passed by the learned Chief Judicial Magistrate, Bhojpur in Shahpur in P.S. Case No. 83 of 2010 by which cognizance has been taken against the petitioners for offences under Sections 406, 323, 504, 379/34 of the Indian Penal Code.

4. Counsel for the petitioner submits that the matter is purely a civil dispute. The police after investigation submitted final form against the petitioners finding the case un-true and has recommended for initiation of proceeding under Sections 182 and 211



of the Indian Penal Code against the informant of the case. Court below, after differing with the final form, has taken cognizance against the petitioners under Sections 406, 323, 504, 379/34 of the IPC.

5. Allegation in the written report is that petitioner no. 1 has purchased jewellery of Rs. 1,33,110/- from the shop of the informant for his son's marriage. Petitioner no.1 asked the informant to keep Rs. 33,110/- and made request to handover the jewellery. He also assured the informant to pay the entire amount after the marriage of his son. The informant was not ready to handover the jewellery to him but due to intervention of co-villagers as mentioned in the written report he handed over the entire ornaments. They assured the informant that petitioner no. 1 will make payment after marriage of his son.

6. The petitioner no. 1, did not make payment of the aforesaid amount then informant went to the house of petitioner no. 1 on 30.04.2010 at 5.00 P.M. and demanded his due amount. The petitioner no. 1 did not make payment of the aforesaid amount. It is further alleged that petitioner no. 2 and 3 started abusing the informant and also snatched a bag containing Rs. 1 Lac.

7. From the impugned order, it appears that police after investigation, found the case un-true against these petitioners and re-



commended to initiate proceeding under Sections 182 and 211 of the IPC against the informant of the case. The Court below after differing with the final form has taken cognizance against the petitioners for offence under Sections 406, 323, 504, 379/34 of the IPC.

8. This Court on perusal of the allegation in the written report, finds that there is general and vague allegation made against these petitioners. There is no any ingredient of the offence under which cognizance has been taken by the learned Magistrate. Moreover, even if the allegation is taken to be true, civil remedy is available. Therefore, the impugned order passed by the court below is not in accordance with law.

9. Accordingly, the impugned order dated 07.12.2010 passed by the learned Chief Judicial Magistrate, Bhojpur in Shahpur in P.S. Case No. 83 of 2010 along with entire criminal proceeding against the petitioner is hereby quashed.

10. Criminal Miscellaneous application stands allowed.

(Sanjay Priya, J)

sushma/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	21-05-2018
Transmission Date	21-05-2018

