

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.23991 of 2013

Arising Out of PS. Case No.-1815 Year-2008 Thana- VAISALI COMPLAINT CASE
District- Vaishali

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1. Md. Rafi Alam S/O Late Yusuf Nazir Manager- Shree Baidyanath Ayurved Bhawan, Pvt. Ltd., Industrial Area, Hajipur, P.S- H Ajipur, District- Vaishali, Presently Residing At Mohalla- Bibiganj, P.S- Danapur, District- Patna.
 2. Shashi Shekhar S/O Ratneshwar Jha, Office Assistant, Manager- Shree Baidyanath Ayurved Bhawan, Pvt. Ltd., Industrial Area, Hajipur, P.S- Hajipur, District- Vaishali, Presently Residing At Mohalla Police Colony, P.S- Gardanibagh, District- Patna.
 3. Bibhushan Kumar Singh S/O Sri Mani Kant Singh Labour Appointed As Security, Shree Baidyanath Ayurved Bhawan Pvt. Ltd., Industrial Area, Hajipur, P.S- Hajipur, District- Vaishali, Presently Residing At Vill+ P.O- Subhai, P.S- Hajipur, District- Vaishali.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Md. Ibran Hassan @ Md. Ibrar Hasan S/O Md. Islam Worker Shree Baidyanath Ayurved Bhawan Pvt. Ltd, Industrial Area, Hajipur, P.S- Hajipur, District- Vaishali, Presently Residing At Mohalla- Bag Dulhan, P.S- Hajipur, District- Vaishali.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. B.K. Sinha, Sr. Advocate with Mr. Alok Kumar Sinha, Advocate
For the Opposite Party/s	:	Mr. Nishant Kumar Jha, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 18-12-2018

Heard Mr. B. K. Sinha, learned senior counsel along
with Mr. Alok Kumar Sinha, learned counsel for the petitioners;



Mr. Jharkhandi Upadhaya, learned APP for the state and Mr. Nishant Kumar Jha, learned counsel for the opposite party no. 2.

2. The petitioners have moved this Court under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') for the following relief:

“That this petition is directed for quashing the order dated 22.02.2013 taking cognizance against the petitioners under Section 323 of the Indian Penal Code in Complaint Case No. 1815 of 2008, pending at present in the court of learned Sub-Divisional Judicial Magistrate, Hajipur at Vaishali.”

3. The allegation made by the opposite party no. 2, who is the complainant, is that the petitioners had threatened him and other workers with dire consequences due to them raising demand and also that due to their stand the conciliation before the Assistant Labour Commissioner, Muzaffarpur had failed and while they were coming back the complainant who was on a motorcycle was hit by the car in which the petitioners were travelling due to which he sustained injuries and due to the intervention of locals, he was saved. After examining the complainant on S.A and other witnesses, the court has taken cognizance against the petitioners under Section 323 of the Indian Penal Code.



4. Learned counsel for the petitioners submitted that the present is a classic case where abuse of the process of the court is proved. It was submitted that on the date of occurrence i.e., 24.06.2018, the petitioners representing Shree Baidyanath Ayurved Bhawan Pvt. Ltd., which has a factory in the Industrial Area, Hajipur were present before the Assistant Labour Commissioner, Muzaffarpur for conciliation proceedings with the workers of which the opposite party no. 2 was one of the leaders. It was submitted that due to conciliation not having succeeded, while the petitioners were returning, the opposite party no. 2 had stopped the car by putting his motorcycle in front of it and had tried to drag the petitioner no. 1 out of the car but having failed had given blows, both by fists and his helmet and had also assaulted the other petitioners, for which the petitioner no.1 had lodged Vaishali Sadar P.S. Case No. 204 of 2008 on 24.06.2008 itself at 07.00 PM. It was submitted that in order to counter the said case the present false complaint case has been filed. It was further submitted that falsity of the complaint case would be apparent from the fact that in a haste, the complainant has forgotten to make the driver of the car on which it is alleged that the petitioners were travelling an accused and, thus, the only allegation being that the car hit the



motorcycle of the complainant, the petitioners who, at best, were passengers in the car, cannot be held liable for any offence, muchless under Section 323 of the Indian Penal Code and cognizance taken against them by the court is totally illegal and misconceived. It was submitted that in the background of the true events for which the petitioner no. 1 had lodged a police case would also expose the oblique reasons for which the complaint case has been filed.

5. Learned APP and learned counsel for the opposite party no. 2, who has filed counter affidavit, submitted that the court has taken cognizance and the petitioners having filed a petition for discharge the process should be allowed to continue and the petitioners shall have full opportunity at the appropriate stage. It was further submitted that the opposite party no. 2 is a poor labourer whereas the petitioners are influential persons of the management of the factory.

6. 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 stand of the petitioners that it was the opposite party no. 2 and others who were the aggressors for which Vaishali Sadar P.S. Case No. 204 of 2008 was lodged on the very day of



occurrence at 07.00 PM itself clearly indicates that the present complaint case which has been filed on the next date is only to counter the adverse effect of the police case filed by the petitioner no. 1 against the opposite party no. 2. Further, the sequence of events, as per the prosecution story in the F.I.R. lodged by the petitioner no. 1 is very natural whereas the story made out in the complaint appears to be highly improbable. The Court is also in agreement with the submissions of learned counsel for the petitioners that the only allegation being that the motorcycle of the complainant was hit by the car in which the petitioners were travelling without naming the driver or making him accused and further also not stating in the complaint or during deposition that any of the petitioners were at the wheels, clearly shows the frivolous nature of the complaint. The Court is, thus, convinced that letting the criminal case arising out of the complaint filed by the opposite party no. 2 would be an abuse of the process of the Court and it is a fit case where the Court is required to exercise its inherent powers under Section 482 of the Code for securing the ends of justice.

7. For the reasons aforesaid, the application stands allowed. The order dated 22.02.2013 taking cognizance against the petitioners under Section 323 of the Indian Penal Code in



Complaint Case No. 1815 of 2008 pending before the Sub-Divisional Magistrate, Vaishali at Hajipur stands quashed.

(Ahsanuddin Amanullah, J)

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