

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.36744 of 2016

Arising Out of PS.Case No. -105 Year- 2015 Thana -MADHEPURA COMPALINT CASE District-
MADHEPURA

- =====
1. Mahadeo Prasad Gupta, son of late Basant Ram,
 2. Manoj Gupta @ Manoj Kumar Gupta,
 3. Pradeep Gupta @ Pradeep Kumar Gupta, &
 4. Sunil Gupta @ Sunil Kumar Gupta, all sons of Mahadeo Prasad Gupta, all
resident of village-Bhirkhi, Ward No.23, P.S. & District- Madhepura.
- Petitioner/s

Versus

1. The State of Bihar &
 2. Sugandhi Devi, wife of Sri Dilip Sah, resident of village-Bhirkhi, Ward No.23,
P.S. & District-Madhepura.
- Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Yogesh Chandra Verma, Sr. Advocate with
Mr. Nafisuzzoha, Advocate

For the Opposite Party No.1 : Mr. Ashok Kumar Singh, APP

For the Opposite Party No.2 : Mr. Vindhya Keshri Kumar, Sr. Advocate
Mr. Shekhar Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 06-11-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 04.07.2016 passed by the Judicial Magistrate, 1st class, Madhepura, in Complaint Case No.C-105 of 2015 by which the learned Magistrate after holding enquiry has found *prima facie* case against the Petitioners for the offence under Section(s) 323, 341, 504/34 Indian Penal Code.

2. Heard learned counsel for the Petitioners and



learned APP for the State as well as counsel for the Opposite Party No.2.

3. Counsel for the Petitioners has submitted that the Court below has committed illegality in passing impugned order after recording statement of one new witness after disposal of Criminal Revision. He has further submitted that no criminal offence is made out on the basis of allegation made in the complaint.

4. Counsel for the Opposite Party No.2 has submitted that once the Court below has been directed to hold further enquiry in terms of Section 398 Cr.P.C., he is bound to take cognizance in the case.

5. Having heard counsel for the parties, this Court finds that initially police case was registered on the basis of written report filed by Opposite Party No.2 against the Petitioners vide Madhepura P.S. Case No.271 of 2014 for the offence under Section(s) 341, 342, 323, 379, 354/34. The police after investigation submitted final form showing the case false.

6. The learned Magistrate after accepting the final form ordered to register the Protest Petition as Complaint Petition. Thereafter, the learned Magistrate examined the Complainant on Solemn Affirmation and recorded statement of four witnesses during enquiry under Section 202 Cr.P.C. and dismissed the complaint by



order dated 26.08.2015 under Section 203 Cr.P.C. on the ground that there is civil dispute between the parties.

7. The Opposite Party No.2 filed Criminal Revision before the learned Sessions Judge against the aforesaid order vide Cr. Revision No.118 of 2015. The learned Sessions Judge by order dated 05.01.2016 has set aside the order dated 26.08.2015 passed by the learned Magistrate and remitted back the case to the Court below for further enquiry and to pass appropriate order in accordance with law on the basis of materials available on record.

8. The learned Magistrate after receiving the record has examined one new witness, Jai Kumar Gupta, as EW 5 under Section 202 Cr.P.C. and thereafter found *prima facie* case against the Petitioners for the offence under Section(s) 323, 341, 504/34 Indian Penal Code by the impugned order, which is under challenge in this application.

9. Section 398 Cr.P.C. lays down as follows:

398. Power to order inquiry.— On examining any record under Section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203 or sub-section (4) of section 204 or into the case of any person accused



of an offence who has been discharged:
Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.

10. The police has registered the case on the basis of written report filed by the Opposite Party No.2 levelling allegation that on 14.05.2014 at about 3.00 PM the Petitioners, who were neighbours, were demolishing her wall with the help of labourers and masons. The informant raised objection then Mahadeo Prasad Gupta abused her. Thereafter, the accused persons assaulted her with legs and fists and snatched her golden chain. She became naked due to assault. The police registered Mahdepura P.S. Case No.271 of 2014 on the basis of aforesaid written report. The police investigated the case and after investigation submitted final form showing case as false. The Magistrate proceeded on the basis of protest petition and hold enquiry during which he recorded Solemn Affirmation of the Complainant and statement of four witnesses and after holding enquiry by order dated 26.08.2015 had dismissed the Complaint holding that dispute between the parties appears to be civil dispute.

11. Thereafter, Cr. Revision No.118 of 2015 was filed by the Opposite Party No.2 before the Sessions Judge, Madhepura. The Sessions Judge by his order dated 05.01.2016 has set aside the



order dated 26.08.2015 and directed the learned Magistrate to hold further enquiry and pass appropriate order in accordance with law on the basis of materials available on record.

12. The learned Magistrate on receipt of the record examined one new witness, Jai Kumar Gupta, (EW 5) under Section 202 Cr.P.C. and thereafter passed the impugned order by which he has found *prima facie* case against the Petitioners for the offence under Section(s) 323, 341, 504/34 Indian Penal Code.

13. Jai Kumar Gupta, EW 5, has stated during statement to Court's question that there is dispute between the parties for wall and both the parties claim the aforesaid wall belonging to them.

14. This Court after perusing the allegation in the written report filed by the Informant and the allegation made in Protest Petition as well as Solemn Affirmation of the Complainant, statement of four witnesses recorded earlier by the Magistrate and also the statement of another witness, namely, Jai Kumar Gupta, EW 5, finds that all the witnesses have stated that there is civil dispute between the parties. EW 1, 2, 3, 4 have stated to Court's question that they are known to the Complainant and have given statement in Court at the instance of the Complainant. Learned Magistrate after properly appreciating the Solemn Affirmation of the



Complainant as well as statement of four witnesses had dismissed the complaint by order dated 26.08.2015 holding that dispute between the parties is civil dispute and instant criminal case has been filed only to given pressure to the Petitioners.

15. Another witness, Jai Kumar Gupta, EW 5, has stated that there is civil dispute between the parties.

16. Normally, the learned Magistrate after holding enquiry in terms of Section 398 Cr.P.C. takes cognizance in the case if *prima facie* material is found against the accused persons. In the instant case, from the statement of five witnesses recording during enquiry and Solemn Affirmation of the Complainant as well as allegation in the Complaint Petition, it appears that there is civil dispute between the parties and general and vague allegation has been levelled against the Petitioners.

17. Counsel for the Petitioners has submitted that Petitioner No.1 has earlier filed a case against the husband of the Informant/Complainant of the instant case and her other family members vide Madhepura P.S. Case No.270 of 2014 for the offence committed on 14.05.2014. The police has registered case for the offence under Section(s) 341, 342, 323, 307, 379, 504/34 Indian Penal Code on 15.05.2014. Xerox copy of First Information Report of the said case has been annexed as Annexure-3. Thereafter, instant



case has been filed by the Informant on 15.05.2014 vide Madhepura P.S. Case No.271 of 2014 alleging occurrence having taken place on 14.05.2014, which was found to be false by the police after proper investigation. The Informant of the case filed Protest Petition on 02.06.2014. The Court below ordered to register Protest Petition in the Complaint Register. The Court below examined four witnesses during enquiry including Solemn Affirmation of the Complainant and dismissed the Complaint under Section 203 Cr.P.C. by order dated 26.08.2015 on the ground that dispute is civil dispute between the parties and criminal case has been filed only to give pressure to the Petitioners. During fresh enquiry, no further material was brought on record by the Complainant during examination of one new witness, Jai Kumar Gupta, (EW 5). New witness EW 5, Jai Kumar Gupta, has stated to Court's question that there is civil dispute between the parties.

18. This Court on the basis of statement of witnesses recorded during enquiry finds that instant case has been filed by the Complainant/Informant to give pressure to Petitioners to settle civil dispute. The continuation of such criminal proceeding against the Petitioners will amount to abuse of process of law.

19. The Hon'ble Supreme Court in the case of *State of Haryana Vs. Ch. Bhajan Lal* reported in *AIR 1992 SC 604* has



held that where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused with a view to spite him due to private and personal grudge, criminal prosecution is liable to be quashed.

20. In view of such, impugned order dated 04.07.2016 passed by the Judicial Magistrate, 1st class, Madhepura, in Complaint Case No.C-105 of 2015 along with entire criminal proceeding against the Petitioners is hereby quashed.

21. This application is, accordingly, **allowed**.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	14-08-2018
Uploading Date	08-11-2018
Transmission Date	08-11-2018

