

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10884 of 2015

Arising Out of PS. Case No.-808 Year-2010 Thana- GOPALGANJ COMPLAINT CASE
District- Gopalganj

Mrigendra Pratap Sahi son of Late Maharaj Bahadur Gopeshwar Pratap Sahi,
resident of Hathwa Raj Palace, P.S.- Hathwa, District- Gopalganj

... .. Petitioner/s

Versus

1. State Of Bihar
2. Ram Naresh Sah, son of Shri Indrasan Sah, resident of Hathwa Rattan Chuk,
P.S.- Hathwa, District- Gopalganj

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Anjani Kumar Mishra
For the Opposite Party/s : Mr. M.K. Nirala, App

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

8 04-04-2023 On 21.02.2023, the following orders was passed:-

“Heard learned counsel for the petitioner and the
opposite party no.2.

The present petition has been preferred for quashing
of the order dated 27th September, 2011 passed by learned
Judicial Magistrate, Gopalganj, in Complaint Case No. 808
of 2010 under sections 147, 148, 323 and 385 of the Indian
Penal Code.

Learned counsel for the opposite party at the outset
submits that he intends to file counter affidavit and as such
four weeks' time may be allowed.

List this case after four weeks.

It is expected that the counter affidavit will be filed
within the said period and before that a copy will be served
to the learned counsel for the petitioner within a period of
three weeks so that he could file any rejoinder, if required in
the next week.”

2. No counter affidavit has been filed today. No one
appears for the opposite party No. 2.



3. The present application has been filed for quashing the order dated 27.09.2011 passed by the Chief Judicial Magistrate, Gopalganj in Complaint Case No. 808 of 2010 by which cognizance has been taken under Section 147/148/323/385 of the Indian Penal Code.

4. The prosecution case in short is that the complainant filed a Complaint on 1st April 2010 stating therein that on 31st March 2010, his two sons namely Prakash Kumar and Ritesh Kumar were going to attend natural call near Keshar Bagh, the Guards of Hathwa Raj assaulted them and the Manager of Hathwa Raj namely Manish Kumar and Awadh Kishore Prasad told them that there is an order of the petitioner to kill them. It has been further stated that in the meantime, some persons came and intervened whereafter, the complainant's sons were released.

5. It has been further alleged that on the same day while the complainant was sitting near his house the petitioner along with others forcibly took his signatures on two plain papers.

6. The Complainant further added that when he went to the Police Station, the Officer-in-charge scolded and asked him to leave the Police Station and so has filed the complaint petition.

7. It has been submitted by learned counsel for the petitioner that the complainant is the brother of one Ramesh Sah against whom Eviction Suit No. 11 of 2003 has been filed for non-payment of rent by the wife of the petitioner and because of the same, just for harassing the petitioner, the present complaint has been filed. Learned counsel further submits that the prosecution of the petitioner is an abuse of the process of the Court as the complaint has been filed with an oblique motive on the behest of a tenant and the same should not continue. He next



submits that during enquiry the report was called for by the Magistrate from the Police. The police had submitted the report that the allegations were false, but without considering the police report cognizance was taken only on the basis of statement of the complainant and the witnesses.

8. Learned APP for the State has opposed the application and has submitted that the petitioner may raise all the grounds at the stage of framing of charge.

9. Considered the submission of the parties.

From perusal of the materials available on record, it appears that the present complaint has been filed maliciously only to wreak vengeance upon the petitioner by the tenant and in view of the law laid down by the Supreme Court in the case of *State of Haryana Vs. Bhajan Lal [1992 Supp (1) SCC 335]*, this application is allowed.

10. Accordingly, the order dated 27.09.2011 passed by the Chief Judicial Magistrate, Gopalganj in Complaint Case No. 808 of 2010 by which cognizance has been taken under Section 147/148/323/385 of the Indian Penal Code is quashed.

(Sandeep Kumar, J)

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