

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.39624 of 2015

Arising Out of PS. Case No.-345 Year-2015 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Hasina Jasmin @ Hasina Khatoon W/o Md. Arssad Hussain Residing at Sobhan Tola-Dih, P.S. Simari, District Darbhanga.
 2. Md. Mustaque Ahamed S/o Late Abdul Khalaque Residing at Sobhan Tola-Dih, P.S. Simari, District Darbhanga.
 3. Md. Nuruddin @ Nazam S/o Md. Mustaque Ahamed Residing at Sobhan Tola-Dih, P.S. Simari, District Darbhanga.
 4. Noor Hasan S/o Late Makbul @ Chhakku Residing at Sobhan Tola-Dih, P.S. Simari, District Darbhanga.
 5. Tanvir Ahamed @ Chhote S/o Late Anishur Rahman Residing at Sobhan Tola-Dih, P.S. Simari, District Darbhanga.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Md. Arsad Hussain S/o Late Saiyad Hasan Resident of Sobhan Tola-Dih, P.S. Simari, District Darbhanga, Presently residing at New Coloney Digha, P.S. Digha, District Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sanjeet Kumar, Adv.
For the Opposite Party/s : Mr.R.P.S.Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

7 15-03-2023 Heard learned counsel for the petitioners and the

State.

This is an application for quashing of the order dated
15.06.2015 passed in Complaint Case No. 345(C) of 2015 (Md.
Arssad Hussain Vs Md. Mustaque Hussain and Others), by
which cognizance was taken Under Sections 323, 341, 504, 448
and 379 of the Indian Penal Code and at present the same is



pending in the Court of Sri. Madhvendra Singh, learned Judicial Magistrate, 1st Class, Patna.

The prosecution story read as follows :

(i) the accused no. 2 (petitioner no. 1) is the ex- wife of the complainant, accused no. 1 (petitioner no. 2) is the father-in-law of the complainant, accused no. 3 (petitioner no. 3) is the brother-in-law of the complainant and accused no. 4 and 5 (petitioners no. 4 and 5) are the friends of petitioner no. 2;

(ii) the complainant is originally a resident of Sobhan Tola-Dih, P.S.-Simari, District-Darbhangha and is working in a general store at Digha, P.S.-Digha, District-Patna, as a Salesman;

(iii) the marriage of the complainant with the petitioner no. 1 was solemnized on 30.06.2007 according to Muslim Customs at Village Sobhan Tola. The complainant for the purpose of his job ,came to Patna while his wife resided at Sobhan Tola. The complainant used to come to his parental village during holidays;

(iv) whenever the complainant requested his wife (petitioner no. 1) to come to Patna, she on one or the other pretext used to refuse the same. The petitioner no. 1 to 3 used to pressurise the complainant to leave his parents and reside with



them at the village;

(v) the petitioner no. 1 used to create trouble with the parents of the complainant and at one point of time also had given poison to the mother of the complainant and the petitioner no. 1 left the house of the complainant alongwith her jewelleryes to her parents' house and on request she did not return to her matrimonial house;

(vi) on 29.07.2010, the petitioner no. 1 and 2 came to the house of the complainant at Digha at Patna and scolded the complainant and threatened him to implicate in false case. The complainant for the said occurrence, had filed informatory petition bearing Informatory Petition No. 2395 of 2010 dated 02.08.2010 before the Court of learned C.J.M., Patna;

(vii) the complainant later on learned that the petitioner no. 1 is working as an Assistant Teacher and she used to give her salary to her parents and due to which she does not want to come to Patna;

(viii) on 23.03.2011 the complainant had filed one matrimonial case bearing no. 54/2011 for restitution of conjugal rights before the Family Court at Darbhanga, wherein the petitioner no. 1 refused to stay with the complainant. The complainant thereafter on 06.11.2012 divorced the petitioner no.



1 through Muslim Law which was accepted by her;

(ix) the accused persons regularly threatened the complainant to transfer his ancestral property to the petitioner no. 1;

(x) on 16.01.2015 at about 6 P.M. when the complainant was in his rented house at Digha, all the accused persons came there in a Santro Car. The petitioner no. 1 stayed in the car and told to force the complainant to accede to the desires of the petitioner no. 1;

(xi) the petitioner no. 2 to 5 forcefully entered the house of the complainant and under the fear of pistol they forcefully got signature of the complainant on typed papers including on one-two stamp papers. The accused persons also searched the house of the complainant and took away an amount of Rs. 1800 and documents relating to the case. The accused persons abused the complainant for not finding the papers of the ancestral property of the complainant. The complainant raised the alarm and the neighbours came and thereafter the accused persons fled away.

The main contention of the learned counsel for the petitioners is/are that they reside in Darbhanga and as the divorce through Muslim Law had already happened, there was



no occasion for them to travel all the way to Patna only to assault the complainant, the husband of the petitioner No. 1 as also take away Rs. 1800.- and some documents.

It has further been submitted by him that so far as the case lodged by the lady against his husband is/was concerned, the same resulted into acquittal of the husband of the petitioner No. 1, the complainant herein.

On 15.2.2023, taking into account the contention of the learned counsel for the petitioners that on the date of occurrence, they were not in Patna rather they were in Darbhanga, the matter was adjourned for filing supplementary affidavit and the order dated 15.2.2023 read as follows :

“Heard learned counsel for the petitioner and learned APP for the State. Learned counsel for the petitioner seeks and is granted permission to file a supplementary affidavit bringing on record certain document to prove that on the date of occurrence, the accused persons were not in Patna, rather were in Darbhanga and/or any other place but definitely not in Patna.

It has been submitted by learned counsel for the opposite party that so far as the FIR lodged by the lady against the opposite party no.2 is/was concerned, they have been acquitted by the court of learned



*Sub-Divisional Judicial Magistrate,
Darbhanga in Trial No.473/2022 on
01.04.2022.*

Let the order be kept on record.

List this case on 15.03.2023. ”

Today, on call, learned counsel for the petitioners submit that no document could be made available enabling him to file supplementary affidavit and as such, once again, he argued the matter on merit.

It was further averred by the learned counsel for the petitioners that only because the lady had lodged case under Section 498A of the Indian Penal Code against the husband as a counter blast and with mala fide intention, the present petition was filed.

Learned APP on the other hand submits that to allow the present petition, it is necessary to have support of the contention put forward by the learned counsel for the petitioners that on the date of occurrence, they were not in Patna rather were in Darbhanga. In absence of that, it would be appropriate that they face trial.

This Court finds force in the contention put forward by the learned APP. The specific contention in the complaint is that the family members of the ex-wife of the complainant came to his place, assaulted, snatched some documents as also Rs.



1800/-.

In that background, when the petitioners are unable to show that at no point of time, they were not in Patna rather were in Darbhanga, it would be appropriate that the complaint preferred by the complainant is taken to its logical conclusion.

No interference in the order in question is required.

The petition stands dismissed.

(Rajiv Roy, J)

Ajay Singh/-

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