

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.33501 of 2015

Arising Out of PS. Case No.-3778 Year-2013 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Indu Bhushan Sinha @ Indu Bhushan Singh and Ors son of late Ravindra Nath Singh,
 2. Gaurav Kumar, son of Indu Bhushan Sinha @ Indu Bushan Singh Both are resident of village Hasanpura, P.S. Janipur, District Patna- at present residing in Mohalla- Mithapur, West to Gaya Line Gumti, P.S. Jakkanpur, District Patna.
 3. Suraj Kumar, son of Krishnandan Singh, resident of Mohalla Shree Krishna Nagar Road No. 3, P.S. Budha Colony, District Patna.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Mundrika Thakur, son of late Ran Chandra Thakur, resident of Mohalla Harish Chandra Nagar, Post Dhelwa, P.S. Beur, District Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.
For the State	:	Mr. Madan Kumar APP
For the Opposite Party/s:	:	Mr. Krishna Chandra, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

3 21-02-2023 Heard the learned counsel for the parties.

This application has been filed for quashing the order dated 04.08.2014 passed by Judicial Magistrate, 1st Class, Patna in Complaint Case No. 3778(C)/2013 by which the learned Judicial Magistrate has taken the cognizance for the offences under Section 323 and 379 of the I.P.C.

The prosecution story is that:-

“The complainant-opposite party no. 2 filed a complaint case bearing No. 3778(C)/2013 on 29.10.2013. In the



complaint petition he impleaded these petitioners as accused nos. 1, 2 and 3 respectively and alleged therein that accused no. 1 Indu Bhushan Sinha is engaged in money lending business. The accused no. 2 Gaurav Kumar is the son of accused no.1, the accused no. 3 is a friend of accused no. 1 and both of them are helping accused no. 1 in his business of money lending.

According to the complainant, he fell in need of money for treatment of his wife Champa Devi in the year 2007. He went to the house of accused no. 1 alongwith two witnesses are requested to provide him a loan of Rs. 45,000/-. It is alleged that on said date a sum of Rs. 10,000/- was given in cash to the complainant after getting his signature on a 100 Rupees Non-Judicial stamp paper. The accused person told him to pay interest 6% per month. On 12.09.2007, the complainant alleged that he went to the house of the accused no. 1 and submitted a xerox copy of the sale deed of his land, pass book of the SBI and two cheques and he signed both the blank cheques as per the direction.

It is further alleged that accused no. 3 provided a blank paper on which as per order of accused no. 1, it was written thereon that a sum of Rs. 90,000 has been received from accused no. 1 for construction of house. The complainant



further alleged that he refunded Rs. 90,000/- to accused no. 1 and demanded the Non-Judicial Stamp papers on which his signatures were obtained along with two cheques but the accused persons denied to return the documents and cheques and threatened to kill him and demanded more money. He further alleged that accused persons acting in connivance with each other forged the non-judicial stamp paper in a false agreement in which it has been wrongly shown that the complainant had taken a sum of Rs. 2,15,000/- from accused no. 1 for construction of his house and in case of non-refund of money within 28 months, legal action shall be taken. The complainant claimed that he had already constructed a house in the year 2002 after taking loan from S.B.I. Mithapur Branch. The complainant further alleged that the accused put a sum of Rs.90,000/- on cheque no. 508890 and lodged the said cheque for encashment in his account, but the cheque stood dishonoured on presentation. Again the accused no. 1 Indu Bhushan Sinha lodged a Complaint Case No. 849(C)/2010 which was referred to Parsa Bazar Police Station u/s 156(3) Cr. P.C. and Parsa Bazar P.S. Case No. 71/2010 has been registered. The case is, therefore, pending in the court of Sri Ashutosh Khaitan, Judicial Magistrate First Class, Patna.



The complainant further alleged that the Bank account number of the complainant had changed in the year 2010, but both the cheques which were given by the complainant at the instance of the accused contained the same old account number which would allegedly show the dishonest / fraud on the part of the accused persons. The complainant, therefore, alleged that all the accused have indulged in forging by creating a false agreement on the Non-judicial stamp paper and with a dishonest intention tried to draw money from the account of the complainant through the two cheques given to the accused no. 1.

The complainant further alleged that on 28.10.2013 when the complainant was going to attend the case no. 783(M)/2010 in the court of Sub Divisional Magistrate, Patna Sadar, Patna, the accused persons alongwith two unknown persons surrounded the complainant and threatened him of dire consequences if the case u/s 107 Cr. P.C. is not withdrawn. All the accused persons were bent upon beating the complainant. The accused no. 1 started abusing the complainant, whereas the accused no. 2 took out a sum of Rs.1426/- from the pocket of the complainant. The accused no. 3 put the complainant down on the earth and all the accused persons started beating the complainant, but fled away as the passers by on the Ashok Raj



Path assembled. On these allegations, it is further alleged that the Pirbahore Police Station did not accept the complaint of the complainant and refused to register a case, therefore, the complaint petition is being filed.

From reading of the complaint, it appears that it is a counter blast to the earlier complaint which has been filed against the opposite party no. 2 for cheque bounce.

It is a malicious prosecution and in light of judgment of the Hon'ble Supreme Court in the case of *Punjab National Bank Vs. Surendra Prasad Sinha AIR 1992 SC 1815*, This application is allowed.”

The order taking cognizance dated 04.08.2014 passed by learned Judicial Magistrate, 1st Class, Patna in Complainant Case No. 37478(C)/2013 for the offences under Section 323 and 379 of IPC is hereby quashed.

(Sandeep Kumar, J)

Shishir/Vikas

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