

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.489 of 2019

Arising Out of PS. Case No.-528 Year-2018 Thana- DARBHANGA COMPLAINT CASE
District- Darbhanga

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Bardhan Kumar Sah Son of Late Ram Prasad Sah Resident of Village -
Bajitpur, P.S.- Manigachhi, (Bajitpur, O.P.), Distt.- Darbhanga.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Deo Narayan Sahu Son of Late Surya Narayan Sahu, Resident of Village -
Bajitpur, P.S.- Manigachhi, (Bajitpur O.P.), Distt.- Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajib Ranjan Jha, Adv.
For the State	:	Mrs. Asha Kumari, APP
For the O.P. No. 2	:	Mr. Vinay Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL JUDGMENT

Date : 18-03-2024

The petitioner is the complainant of C.R. No. 528 of 2018 pending before the learned Chief Judicial Magistrate, Darbhanga. It is alleged by the complainant that on 09.05.2018, the accused persons, namely, Ganga Purbey, Suman Purbey, Ram Nath Purabey, Rimjhim Devi and Deo Narayan Sahu committed trespass into the shop of the complainant and directed him to give vacant position of the said shop stating *interalia* that they purchased the land over which the said shop was situated by a registered deed of conveyors. The complainant purchased the land prior to the accused persons and he constructed a shop there on and carries on a business of gold and silver ornaments in the said shop. It is also alleged by the petitioner/complainant that on 10.05.2018, the above named

accused persons trespassed into his shop, committed mischief by causing damage to the articles and furniture of the said shop. They also broke down a railing constructed by the mason on the first floor of the said shop. They pulled the complainant, put a *gamcha* around his neck and pulled him down. The complainant fell down and sustained injury on his knees. One of the accused persons took away a gold chain from his neck. They also took away cash money from his pocket. In the initial statement, the complainant stated that all the accused persons committed the offence as stated above. Other witnesses specifically stated that O.P. No. 2, Deo Narayan Sahu was along with other accused persons and he also took specific part in committing mischief and assault to the complainant.

2. The learned Magistrate on consideration of the evidence on record found that the complainant has been able to make out a case against all the accused persons and took cognizance of offence under Sections 341/ 323/ 327/ 420/ 467/ 468/ 471/ 386/ 427/ 504/ 120B/ 452 and 380 of the I.P.C. The accused Deo Narayan Sahu moved before the learned Sessions Judge, Darbhanga in Cr. Rev. No. 426 of 2018 challenging the order of taking cognizance. The learned Sessions Judge firstly held on the basis of the submissions made by the learned Advocate on behalf of the accused/petitioner that real dispute

between the parties relates to ownership of the subject land on which the shop room in question was constructed. Therefore, the nature of dispute is essentially civil in nature. It is also held by the learned Sessions Judge that the complainant made an omnibus allegation against the petitioner and other witnesses did not specifically state the name of O.P. No. 2 Deo Narayan Sahu in committing the offence. Therefore, the learned Sessions Judge set aside the order dated 30.07.2018 regarding taking of cognizance in respect of the O.P. No. 2, namely, Deo Narayan Sahu and the revisional application was allowed.

3. Against the said order, the complainant has approached this Court assailing the order passed by the learned Sessions Judge, Darbhanga.

4. On perusal of the order passed by the learned Sessions Judge, it appears to this Court that the learned Sessions Judge found allegation against the O.P. No. 2 as groundless inasmuch as his role in committing the offence was not specifically stated by the complainant.

5. The word groundless means that *“there must be no ground for presuming that the accused has committed the offence”*. The word groundless means that *“materials placed before the Court do not make out or are not sufficient to make out a prima facie case against the accused.”* It is needless to say

that at the time of taking cognizance, the Court is required to see that a very strong suspicion founded upon materials before the Magistrate, which needs in to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged. This presumptive opinion may justify the Trial Court to take cognizance against the accused persons.

6. The word suspicion referred to by this Court must be founded upon materials placed before the Magistrate which needs same to form a presumptive opinion as to the existence of factual ingredients constituting the offence alleged. Therefore, the words “*a very strong suspicion*” used by this Court must not be a strong suspicion of a vacillating mind of a Judge. That suspicion must be founded upon the materials placed before the Magistrate which needs same to form a presumptive opinion about the existence of factual ingredients constituting the offence alleged.

7. In the instant case, the complainant stated that all the accused persons came to his shop on 09.05.2018 and 11.05.2018 and committed the offence cognizance of which was taken by the learned A.C.J.M.-VIth, Darbhanga. The other witnesses specifically stated the name of the O.P. No. 2, therefore, I do not find any reason, as to why the learned Sessions Judge, Darbhanga executed O.P. No. 2 from the array

of the accused persons. It is needless to say that at the time of taking cognizance of offence, only the statement of the witnesses, an inquiry report under Section 202 of the Cr.P.C. shall be taken into consideration. In the instant case, the learned Chief Judicial Magistrate, Darbhanga took into consideration the statement of the witnesses and found the O.P. No. 2 equally liable to face trial.

8. For the reasons stated above, I do not find any legality, validity or propriety in the order passed by the learned Sessions Judge, Darbhanga.

9. The impugned order passed by the learned Sessions Judge, Darbhanga is set aside and the order passed by the learned A.C.J.M.-VIth, Darbhanga on 30.07.2018 be revived. The instant criminal revision is accordingly allowed on contest, however, there shall be no order as to cost.

(Bibek Chaudhuri, J)

sadique/-

AFR/NAFR	NAFR
CAV DATE	NA
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