

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.50054 of 2023

Arising Out of PS. Case No.-228 Year-2021 Thana- EAST CHAMPARAN COMPLAINT
District- East Champaran

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1. MUKESH MAHTO @ MUKESH KUMAR Son of Vashu Mahto @ Vasu Mahto @ Basu Mahto Resident of village-Shankar Saraiya Kaswa Tola, Police Station-Turkauliya, District-East Champaran at Motihari
 2. BACHA KUMAR MAHTO Son of Vashu Mahto @ Vasu Mahto @ Basu Mahto Resident of village-Shankar Saraiya Kaswa Tola, Police Station-Turkauliya, District-East Champaran at Motihari
 3. RAMNARESH MAHTO @ RAM NARESH MAHTO Son of Vashu Mahto @ Vasu Mahto @ Basu Mahto Resident of village-Shankar Saraiya Kaswa Tola, Police Station-Turkauliya, District-East Champaran at Motihari
 4. ARJUN MAHTO Son of Vashu Mahto @ Vasu Mahto @ Basu Mahto Resident of village-Shankar Saraiya Kaswa Tola, Police Station-Turkauliya, District-East Champaran at Motihari
 5. VASHU MAHTO @ VASU MAHTO @ BASU MAHTO Son of Bhola Mahto Resident of village-Shankar Saraiya Kaswa Tola, Police Station-Turkauliya, District-East Champaran at Motihari
 6. SARASWATI DEVI Wife of Vashu Mahto @ Vasu Mahto @ Basu Mahto Resident of village-Shankar Saraiya Kaswa Tola, Police Station-Turkauliya, District-East Champaran at Motihari

... .. Petitioner/s

Versus

1. The State of Bihar
2. SUKDEV MAHTO MOTIHARI, Male, Son of Bhola Mahto, Resident of village- Shankar Saraiya Kaswa tola, Police Station- Turkauliya, District-East Champaran at Motihari.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Shashank Shekhar, Advocate
For the Opposite Party/s	:	Mr. Ajay Kumar Jha, APP
For the Complainant	:	Ms. Rashmi Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 30-04-2024

1. Heard learned counsel for the petitioners and learned APP for the State. No one appears on behalf of the opposite party no. 2.

2. The petitioners have filed the instant application



praying for quashing of the order dated 4.12.2021 passed in Complaint Case no. 1228 of 2021 by the learned Judicial Magistrate 1st Class, Sadar, Motihari whereby he was pleased to hold that a *prima facie* case under sections 341, 323, 447, 448, 379, 427, 354, 504, 506 and 34 of the Indian Penal Code is made out against the accused persons.

3. As per the prosecution case, the complainant/opposite party no.2 states that there has been oral partition between the parties who are *patidars*. It is stated that on the date of occurrence while the complainant was taking steps for further construction next to his house, the accused persons came armed with *lathi*, iron rod, *farsa* etc. They started to abuse the complainant and stated that as to why he was taking steps over the land in question. On the complainant stating that partition had already taken place and this land fell in his share, it is stated that on the orders of petitioner no.1, the other accused persons started to assault the informant and the members of his family. They assaulted with *lathi*, *danda* as also kicks. It is further stated that on the wife of the complainant intervening, she was also assaulted and her silver chain worth Rs.18,000/- was taken away. The complainant further states that the accused persons entered his room and took Rs.32,000/-. On the complainant



protesting, the accused threatened them and thereafter escaped. On the complainant going to the police station, the case was not registered and which has led to filing of the instant complaint. After examination of the complainant and the witnesses, by the order impugned dated 4.12.2021, cognizance has been taken under the sections as mentioned hereinabove.

4. Learned counsel for the petitioners submits that the petitioners have been falsely implicated in the case. The parties are related which would be evident from the contents of the complaint itself wherein in the very first line, the complainant states that the accused persons are his *patidars*. From reading of the complaint in its entirety it would clearly be evident that it is a matter of property dispute between the family members. Further referring to Annexure-2, it is submitted that on the date of occurrence, the petitioner no.1 was outside the country in Qatar and in support of the said submission, learned counsel for the petitioners refers to the photocopy of the boarding pass of the journey undertaken by the airlines by the said petitioner. It is thus submitted that the complaint is out and out a false case. No offence under any of the sections is made out against the petitioners. The order impugned taking cognizance is not sustainable and thus fit to be set aside.



5. The application for quashing is opposed by learned APP for the State and learned counsel for the complainant. It is submitted by learned counsel for the complainant that so far as the order taking cognizance is concerned, only the contents of the complaint and the statement of the witnesses examined in support of the complaint can be taken into consideration and in case a *prima facie* case is made out, cognizance has to be taken. It is submitted that there is no illegality in the order impugned. There is no merit in the instant application and the same be dismissed. It is further submitted that so far as the plea of alibi is concerned, that cannot be looked into at this stage but will have to be looked into in course of trial.

6. Having heard learned counsel for the parties and having perused the material on record, the allegations as levelled in the complaint are that on the date of occurrence, the accused persons including the petitioners herein came variously armed with *lathi*, iron rod, *farsa* etc. It is stated that the accused who are the petitioners herein abused and assaulted the complainant and the members of his family and took away a silver chain worth Rs.18,000/- and Rs. 32,000/- in cash from the house of the complainant. It is also not disputed that so far as the complainant and the witness examined in course of inquiry,



they have supported the case of the complainant as made out in the complaint petition.

7. It may be noted here that the Hon’ble Supreme Court in the case of M/s Medchl Chemicals & Pharma P. Ltd vs. M/s Biological E. Ltd. & Ors.; 2000 (3) PLJR 56 (SC) has held that the complaint in its entirety has to be examined and at this stage there is no jurisdiction to examine the correctness of the complaint.

8. In view of the facts and circumstances of the case, the contents of the complaint petition and the law as laid down by the Hon’ble Supreme Court, in the opinion of the Court, the petitioners have not made out any case for interference in the order impugned dated 4.12.2021 taking cognizance.

9. The Court finds no merit in the instant application and the same is dismissed.

(Partha Sarthy, J)

Shiv/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	
Transmission Date	

