

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.60619 of 2023

Arising Out of PS. Case No.-1087 Year-2022 Thana- PATNA COMPLAINT CASE District-
Patna

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1. BIBHAKAR MISHRA S/o- RAMESHWAR MISHRA village- Opp. Block-1, madhu Vihar Railway Colony, Lakhni Bigha Po- Khagaul Ps- Danapur, Dist- patna
 2. Archna B. Mishra @ Archna Mishra wief of Bibhakar Mishra village- Opp. Block-1, madhu Vihar Railway Colony, Lakhni Bigha Po- Khagaul Ps- Danapur, Dist- patna
 3. Rahul Mishra son of Bibhakar Mishra Through his Father and Natural Guardian Bibhakar Mishra, R/o village- Opp. Block-1, madhu Vihar Railway Colony, Lakhni Bigha Po- Khagaul Ps- Danapur, Dist- patna
 4. Narwada Prasad Sahu @ Narwada Prasad son of Nagina Sah Village and P.O.- Nayagaon Ps- Nayagaon Dist- Saran
 5. Chanda Kumari wife of Narwada Prasad Sahu Village Po Ps- Nayagaon Dist- Saran

... .. Petitioner/s

Versus

1. The State of Bihar Bihar
2. Sachin Bharti son of Dular Chandra Singh R/o- Bindula Bhavan Plot No-1460, Lakhni Bigha Khagaul Ps- Danapur Dist-Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Prashnt Sinha, Advocate Mr. Rishi Raj Raman, Advocate Mr. Kunal Kumar, Advocate
For the Opposite Party/s :		Mr. Dinesh Singh Mr. Kumar Prabhakar Mr. Manoranjan Kumar Ms. Usha Kumari Singh

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

5 02-07-2024 This application has been filed for quashing of the order dated 07.07.2023 passed by the Judicial Magistrate, First Class-IV, Danapur in Complaint Case No. 1087 of 2022 by which cognizance has been taken against the petitioners under Sections 323, 379, 504 and 341 of the IPC.



2. As per the complainant, he is a self employed person and he is a certified member of National Stock Exchange, Bombay Stock Exchange and *Bibhakar Mishra* is the neighbour of the complainant and *Narwada Prasad* is the friend of *Bibhakar Mishra*. One day both *Bibhakar Mishra* and *Narwada Prasad* went to the office of the complainant and insisted for execution of an agreement on behalf of the business in the share market. On special inspection by *Bibhakar Mishra* and *Narwada Prasad*, the agreement was prepared and on consent of both the parties, *Bibhakar Mishra* entered into first agreement on 3rd January, 2022 and two more agreements dated 7th February, 2022 and 19th April, 2022 by superseding the previous agreements respectively. *Narwada Prasad Sahu* also entered into agreement on 19th April, 2022 by superseding the previous agreements.

3. Both the persons did not follow the first condition of the agreement and did not remit the said amount to the complainants Bank Account and resorted to pay only the fractional amount at his convenience. *Bibhakar Mishra* transferred Rs.65,000/- against the transferable amount of Rs. One lakh. *Narwada Prasad* also did the same. Due to non-compliance of the clauses of the agreement, the complainant



returned the received amount and he admits that against deposit of Rs. 77000/-, he returned Rs. 70400/- to *Bibhakar Mishra*.

4. *Bibhakar Mishra* and *Narwada Prasad Sahu* hatched a conspiracy and called the complainant for a meeting on 28-05- 2022 and When the complainant reached there, he found that 8 to 10 persons were present there including the names of the persons mentioned in the complaint. *Bibhakar Mishra* and *Narwada Prasad Sahu* pushed him inside the room and they started slapping him. *Narwada Prasad Sahu* pointed a gun at his head and threatened to kill him. *Archan B Mishra* snatched his office bag and took out the cheque book, which the complainant always carries for business purpose. *Narwada Prasad Sahu* and *Bibhakar Mishra* forced the complainant to fill in the details and sign for cheques in serial No. 00759 to 00762 of dated 01-07-2022, two on the name of *Bibhakar Mishra* for an amount of Rs. Two lacs and Rs.1,62,000/- each and two on the name of *Narwada Prasad Sahu*, one having the amount of Rs. 4,50,000/- and another having the amount of Rs. 3,64,000/-. Two blank papers were also signed by threatening the life of the complainant. Cash amount of Rs. 15,000/-, a gold finger ring, a gold chain and a wrist watch was also snatched by *Chanda Kumari*. The complainant was kept in confinement for more



than three hours and faced inhuman behavior, his mobile was also seized. He was released at 11.30 PM on 28-05-2022 with a threaten not to inform to the Police.

5. On 09-06-2022 around 03 PM., Bibhakar Mishra along with his wife, son and daughter entered in the house of the complainant and they assaulted his wife and 20 months old son and took away the earrings of his wife. The complainant when heard about the occurrence, reached at his house and took his wife for treatment.

6. *Bibhakar Mishra* and *Narwada Prasad Sahu* have prepared a document on the stamp paper of Rs. 1000/-, purchased in the name of the complainant on 16-06-2022, put up forged signature of the complainant claiming Rs. 24 lacs and simultaneously denied any occurrence of share market investment agreement.

7. Learned counsel for the petitioners submits that the petitioners are innocent and have not committed any offence. The petitioner no.1 to 3 are the family members inasmuch as the petitioner no.1 is the husband of petitioner no.2 and father of petitioner no.3 while petitioner no. 4 & 5 are husband and wife. The petitioner no.1 is a retired B.S.F. personnel while the petitioner no.4 is still in service in BSF.



Petitioner no.1 is the neighbour of the complainant. One day, the complainant came to petitioner no.1 and started demanding Rs. Ten lacs. The complainant said that he is a certified broker in share market and got prepared three documents respectively on 03-01-2022, 07-02-2022 and 19-04-2022 before the Notary Public At Danapur and took Rs. 4,50,000/- from the petitioner no. 1. The complainant offered an scheme which provided for investment and return for the purpose of trapping the petitioner. When the petitioner no. 1 came to know that the complainant had cheated so many persons, then he along with other witnesses and his wife went to his house and pressurized him. On their pressure, he became ready to pay the amount through cheque and handed over two cheques dated 01-07-2022, for an amount of Rs. 1,62,727/- and another for an amount of Rs. Two lacs. When the petitioner no.1 presented those cheques on 01-07- 2022, it was returned with memo dated 04-07-2022 that the payment has been stopped by the drawer. The petitioner went to the house of the complainant on 05-07-2022 but he refused to pay the amount and started abusing and threatening the petitioner no.1, then the petitioner got served legal notice upon the complainant on 06-07-2022, which was not responded to by the complainant.



8. Learned counsel for the petitioners further submits that petitioner no.1 filed a complaint case no. 903 (C)/2022 in the Court of ACJM 1, Danapur on 25-07-2022 against the complainant. The learned Court of Judicial Magistrate, 1st Class, Danapur took cognizance against the complainant under section 138 of the NI Act and section 420 of the IPC vide order dated 28-02-2023. The petitioner no.2 and petitioner no.4 are the witnesses in the complaint case filed by the petitioner no. 1. Similarly the petitioner no.4 is a serving personnel of BSF. He used to visit the residence of the petitioner no.1, who is his friend. One day, the complainant started demanding Rs. Twenty lacs from the petitioner no.4. As a surety, the complainant got executed a document on 16-06- 2022 on a non-judicial stamp purchased on his name in which he undertook in presence of the witnesses that if the amount is not returned within fifteen days, then he will pay the double amount and the petitioner no.4 can recover from his property. As a surety, he gave two cheques, for an amount of Rs. 3,64,000/- and another for an amount of Rs. 4,50,000/-. The petitioner no.4 paid him Rs. 12 lacs, out of which some amount was paid through online transaction while some other amount was paid in cash. When the petitioner no.4 presented those cheques on 01-07-2022, those cheques were



returned by the Bank with the memo that the payment has been stopped by the drawer. On 05-07-2022, when the petitioner no.4 went to the house of the complainant along with witnesses, the complainant started abusing and threatening the petitioner no.4 and he had to save his life.

9. Learned counsel for the petitioners further submits that allegation is apparent from the fact that the petitioners obtained cheques from the complainant on 28-5-2022 by keeping him in captivity and he sent a legal notice to the petitioner no. 2 & 4 on 18-06-2022. Upon receiving the legal notice, the petitioner no.1 got served a reply to the legal notice upon the complainant on 30-06-2022 in which the allegations made in the legal notice have been denied and it has been clearly stated that the cheque will be deposited in the bank and if it bounces, necessary legal action will be taken against the complainant. It was also stated in the reply to the legal notice that the cheques were given by the complainant under his free will. He further submits that the complaint case filed by the complainant is misuse of the process of the Court to the extent that he has cheated the petitioners and when they filed complaint case before the competent court, the complainant has filed the counter case in order to pressurize them to not to



pursue their case.

10. Learned counsel for the petitioners further submits that in order to put the entire family of the petitioners under pressure, the complainant has deliberately made the wives and son of the petitioners as accused while they are not involved in the occurrence. The petitioner no.3 is aged about 18 years and the petitioner no.5 was pursuing her B.Ed. course from Dr. A.P.J. Abdul Kalam University, Indore, Madhya Pradesh as regular student and her examination was to be held from 31-05-2022 to 13-06-2022, therefore, she was in Indore in connection with her study and she was not present on the alleged date and time of occurrence at the given place.

11. Learned counsel for the State and learned counsel for the O.P. no. 02 have opposed the prayer of the petitioner.

12. Learned counsel for the O.P. No. 02 has taken this Court to the counter affidavit filed by them.

13. It has been submitted by the learned counsel for the O.P. No. 02 that from reading of the complaint and the evidence of witnesses, offences are made out against the petitioners and therefore, once the offences are made out, the same cannot be quashed. He also submits that the complainant



had approached the police for registration of F.I.R. but when the F.I.R. was not registered, this complainant has been filed.

14. I have considered the submissions of the parties.

15. Petitioner No. 01 filed a complaint Case No. 903 (C) of 2022 for bouncing of two cheques of Rs. 3, 62, 727/- and the cognizance has been taken under Section 138 of the NI Act and Section 420 of the IPC.

16. The petitioner no. 04 has filed a Complaint Case No. 854(C) of 2022 for bouncing of two cheques of Rs. 8,14,000/- in which cognizance has been taken under Section 406 and 417 of the IPC.

17. It appears that the present complaint has been filed for pressurizing the petitioners to settle/withdraw the cases for cheque bounce. The complainant has alleged the occurrence on three dates i.e. 28.05.2022, 9.6.2022 and 8.8.2022 but he has not explained till the present complaint as to why the complaint was lodged after such a delay and not on earlier dates.

18. From the aforesaid facts and circumstances, it appears that the present is a mala fide prosecution by the complainant in which two females and one minor i.e. that entire family whose cheques have bounced have been made accused.



19. This kind of mala fide prosecution should not be allowed to continue.

20. Considering the law laid down by the Hon’ble Supreme Court in the case of *State of Haryana V/s Bhajan Lal; 1992 Supp (1), SCC 335*, this application is allowed and the order dated 07.07.2023 passed by the Judicial Magistrate, First Class-IV, Danapur in Complaint Case No. 1087 of 2022 is hereby quashed.

(Sandeep Kumar, J)

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