

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.63145 of 2023

Arising Out of PS. Case No.-586 Year-2022 Thana- ROHTAS COMPLAINT CASE District-
Rohtas

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1. MUKESH SINGH @ MUKESH KUMAR SINGH S/O LATE HIRA SINGH
 2. NARAYAN SINGH S/O RAMKESHAR SINGH @ VIDEO SINGH
 3. LAKSHMAN SINGH S/O RAMKESHAR SINGH @ VIDEO SINGH
 4. JAY SHANKAR SINGH S/O RAMKESHAR SINGH @ VIDEO SINGH
 5. VISHAL SINGH S/O LATE HIRA SINGH
- ALL ARE R/O VILLAGE- KANCHANPUR, PS. SASARAM (MUFFASIL), DIST. ROHTAS, BIHAR-821305

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. GOPAL RAM S/O LATE MUSAFIR CHAMAR R/O VILLAGE-KANCHANPUR, PS. SASARAM (MUFFASIL), DIST. ROHTAS, BIHAR-821305

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Deepak Kumar, Advocate
		Mr. Kishore Kumar, Advocate
For the Opposite Party/s	:	Dr. Ajeet Kumar, APP

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

6 16-05-2024 1. Heard learned counsel for the petitioners and learned APP for the State. No one appears on behalf of the opposite party no.2 inspite of valid service of notice.

2. The application so far as the petitioner nos.4 and 5 having been withdrawn vide order dated 1.11.2023, the instant application is confined to petitioner nos.1, 2 and 3. Use of the term petitioners in the instant order would be referring to petitioner nos.1, 2 and 3 only.



3. The instant application has been filed by the petitioners praying for setting aside the order dated 5.11.2022 passed in Complaint Case no.586 of 2022 whereby the learned Sub Judge IX-cum-Additional Chief Judicial Magistrate, Sasaram, Rohtas held that prima facie case under sections 323, 354 and 379/34 of the Indian Penal Code is made out against the accused persons and has been pleased to issue notice against them.

4. The prosecution case as per the complaint lodged by the complainant on 28.6.2022 in the Court of the learned Chief Judicial Magistrate, Sasaram, Rohtas, it is stated that on 25.6.2022 at about 6 p.m., the accused persons including the three petitioners herein came at the darwaza of the complainant-opposite party no.2 variously armed. They started to abuse. It is stated that on the complainant asking them not to abuse, Mukesh Singh stated that he should be killed on which the complainant ran inside his house. It is stated that all the accused persons including the petitioners herein entered the house of the complainant and started to assault him. On his wife coming to his rescue, she was also assaulted and the accused misbehaved with her. They broke open the trunk of the complainant and took away the ornaments of his wife worth Rs.50,000/-. On the



complainant going to the police station, the police personnel present there did not register the case. The complainant further states that the cause of occurrence is that the accused persons forcibly went to take possession of the land appertaining to Khata no.236 Plot no.418 measuring 1 acre which has been settled by the Government in favour of the complainant. Hence the complaint.

5. The statement of the complainant as also other witnesses were recorded in support of the complaint and by order dated 5.11.2022 passed in Complaint Case no.586 of 2022, the learned Additional Chief Judicial Magistrate, Sasaram was pleased to take cognizance under sections 323, 354 and 379/34 of the Indian Penal Code against the accused persons including the petitioners herein and directed for issuance of summons. It is against this order that the instant application has been filed.

6. Learned counsel for the petitioners submitted that besides the allegations levelled in the complaint being false and concocted, a bare perusal of the allegations levelled would clearly show that the same is purely a civil dispute relating to the land appertaining to Khata no.236 Plot no.418 measuring 1 acre, details of which has been given by the complainant



himself in the complaint petition. It is further submitted that there is specific statement in the complaint of the alleged occurrence having taken place on 25.6.2022 at 6 p.m., on which date the petitioner nos.1, 2 and 3 were in judicial custody in a case and were lodged in the District Jail at Sasaram. Thus there remains no doubt that the instant case filed by way of a complaint is absolutely an abuse of the process of the Court and thus, the order taking cognizance being not sustainable, the same be quashed.

7. Pursuant to the specific case of the petitioners with respect to the three petitioners being in custody on the alleged date of occurrence as stated in paragraph no.5 of this application, this Court was pleased to pass the following order on 2.5.2024:

“1. Learned counsel for the petitioners prays for quashing of the order taking cognizance dated 5.11.2022 passed in Complaint Case no. 586 of 2022 by the learned Additional Chief Judicial Magistrate, Sasaram.

2. The application so far as petitioner nos. 4 and 5 are concerned stood withdrawn vide order dated 1.11.2023.

3. Learned counsel for the petitioners submits that the date of occurrence as stated in the complaint case is 25.6.2022 the accused persons including the petitioner nos. 1, 2 and 3 are said to



have entered the house of the complainant and of having assaulted the complainant as also the members of his family. In reference to the statement made in paragraph no.5 of the petition read with order dated 13.1.2023 (Annexure 3) passed in Cr. Misc. no. 33833 of 2022 and order dated 15.3.2023 passed in Cr. Misc. no. 32610 of 2022, it is submitted that all the three petitioners were in custody since 29.1.2022 and were also in custody on the date of the alleged occurrence in the instant case ie on 25.6.2022. The petitioner no.1 has not been enlarged on bail even today while petitioner nos. 2 and 3 were enlarged on bail only on 13.1.2023.

4. Let the State of Bihar file a counter affidavit to the above application sworn by the Jailor, Sasaram Jail with respect to the fact as to whether petitioner nos. 1, 2 and 3 were in custody in the said jail on 25.6.2022 or not.

5. The affidavit be filed on or before 15.5.2024.

6. Put up this case on 16.5.2024.”

8. Pursuant to the direction of this Court, a counter affidavit sworn by the Jailor, Sasaram Jail has been filed on 12.5.2024, relevant portion of which is quoted herein below for ready reference:

“5. That it is humbly submitted that petitioner no.1 Mukesh Singh @ Mukesh Kumar Singh has been produced to the District Jail



Sasaram on 18.02.2022 from Sub Jail Bikramganj in connection with Sasaram (M) P.S. Case No. 324 of 2020 instituted under section 341, 325, 323, 504, 379, 302/34 of IPC and the petitioner no. 1 is Still in Jail Custody at District Jail Sasaram from the date of 18.02.2022 to till now.

6. That it is humbly submitted that Petitioner No. 2 Narayan Singh produced on 18.02.2022 from Sub-Jail Bikramganj to the District Jail Sasaram on 18.02.2022 in connection with Sasaram (M) P.S. Case No. 324 of 2020 instituted under section 341, 325, 323, 504, 379, 302/34 of IPC and the petitioner no. 2 has been released on bail on 20.01.2023.

7. That it is humbly submitted that petitioner no. 3 Lakshman Singh produced on 18.02.2022 Sub-Jail Bikramganj to the District Jail Sasaram on 18.02.2022 from in connection with Sasaram Muffasil P.S. Case No. 324 of 2020 instituted under section 341, 325, 323, 504, 379, 302/34 of IPC and the petitioner no. 3 has been released on bail on 19.01.2023.

8. That it is humbly submitted that as per the record of the District Jail Sasaram Petitioner No. 1, 2 & 3 were in custody in District Jail Sasaram on 25.06.2022.

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13. That it is humbly submitted that the statement contained in Para No. 5 of the quashing application is true and correct. It is humbly submitted that petitioner nos. 1 to 3 were in Jail Custody at District Jail Sasaram on 25.06.2022.



14. That it is humbly submitted that the statement contained in Para no. 6 of the quashing application is true and correct. It is true that petitioner no. 1 Mukesh Kumar is Still in Judicial custody and petitioner no. 2 & 3 has been released on bail on 20.01.2023 and 19.01.2023 respectively.”

9. From the contents of the counter affidavit filed on behalf of the Jailor, Sasaram Jail, there remains no doubt that all the three petitioners were transferred and brought to the District Jail, Sasaram on 18.2.2022. While the petitioner nos.2 and 3 were released from custody on 20.1.2023 and 19.1.2023, so far as the petitioner no.1 is concerned, he has still not been released from custody and continues in jail custody even today.

10. In view of the facts and circumstances of the case, there remains no doubt that all the three petitioners, as on the alleged date of occurrence ie 25.6.2022 were in custody in District Jail, Sasaram. Thus, in the opinion of the Court, the filing of the instant complaint and the order taking cognizance is clearly an abuse of the process of the Court and is not sustainable. The order impugned dated 5.11.2022 taking cognizance against the petitioners under sections 323, 354 and 379/34 in connection with Complaint Case no.586 of 2022 by the learned Additional Chief Judicial Magistrate, Sasaram,



Rohtas is not sustainable and is hereby quashed.

11. The application is allowed.

(Partha Sarthy, J)

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