

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.68483 of 2023

Arising Out of PS. Case No.-94 Year-2021 Thana- BEGUSARAI COMPLAINT CASE
District- Begusarai

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ASHISH KUMAR @ KUNDAN KUMAR, son of Naresh Chaudhary,
Resident of Village- Shokahara P.S.- Phulwariya, District- Begusarai

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ganesh Chaudhary, Son of Late Saryug Chaudhary, Resident of Village- Shokahara, P.S.- Phulwariya District- Begusarai.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Ramakant Sharma, Sr. Advocate Mr. Rakesh Kumar Sharma, Advocate
For the State	:	Mr. Lalan Kumar
For the O.P. no.2	:	Mr. Abhishek Anand, Advocate Mrs. Madhuri Kumari, Advocate

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
C.A.V. ORDER

5 11-07-2024 1. Heard learned Senior counsel for the petitioner,

learned APP for the State and learned counsel for the opposite

party no.2.

2. The petitioner has filed the instant application
praying for quashing the order dated 27.1.2022 passed in
Complaint Case no.94C of 2021 by the learned Judicial
Magistrate 1st Class, Begusarai whereby the learned trial Court
was pleased to take cognizance under sections 341, 323 and 379
of the Indian Penal Code.

3. The prosecution case as per the petition of
complaint filed by the complainant-opposite party no.2 on



13.1.2021 in the Court of learned Chief Judicial Magistrate, Begusarai alleges inter alia that on 11.1.2021 at about 5 p.m. when the complainant was returning home from the market, all the accused persons who were variously armed surrounded the complainant. Ashish Kumar (petitioner herein) placing his country made pistol on the temple of the complainant stated that he should send a TV of the L.G. company from his shop as he was earning a lot. On the complainant refusing to carry out his orders, it is stated that Ashish Kumar directed the other accused that he should be assaulted brutally. All the accused persons started to abuse and assault the complainant. Ashish Kumar is said to have taken away gold chain worth Rs.25,000/ from the complainant. On *hulla* being raised, it is stated that the witnesses reached there and have seen the occurrence. The complainant states that information was given about the occurrence at the police station, however, the police personnel did not take note of the same. As such it was prayed that cognizance be taken of the offence stated in the complaint.

4. On the complaint filed by the complainant, Complaint Case no.94 of 2021 was registered in the learned trial Court under sections 323, 341, 387, 384, 379 and 506 of the Indian Penal Code. The statement of the complainant and the



witnesses were recorded in course of enquiry. By order dated 27.1.2022, the learned trial Court was pleased to take cognizance in the case. It is against this order that the instant application has been preferred.

5. Learned Senior counsel appearing for the petitioner submits that the complainant happens to be the own uncle of the petitioner. There is dispute between the parties which would be evident from the FIR being Phulwariya P.S. Case no.101 of 1998 (Annexure-2) having been registered by the complainant herein against the father of the petitioner and other members of the family. Reference is made to the letter dated 11.4.2019 (Annexure-3) written by the father of the petitioner against the complainant herein which would show the long standing dispute between them. With respect to the dispute in the past, a panchayati was also held which would be evident from Annexure-3. It is further submitted that in view of the enmity between the parties and the long standing dispute, the petitioner, who is a brilliant student, aged about 26 years and has qualified in a number of competitive examinations, has been falsely implicated in the case by the complainant in a malicious prosecution. Learned Senior counsel refers to the letter dated 13.4.2023 (Annexure-4) issued by the East Central Railway



addressed to the petitioner offering him appointment as Senior Commercial-cum-Ticket Clerk. It is submitted that only to spoil the career of the petitioner that the instant case with false allegations has been lodged. This being a case of malicious prosecution, the order taking cognizance be quashed and the application be allowed.

6. The application is opposed by learned APP for the State and learned counsel for the opposite party no.2. Learned counsel for the opposite party no.2 in reference to the petition of complaint submits that from reading of the contents of the complaint, it would transpire that not only the petitioner is named in the F.I.R. but there is direct allegation against him of having abused and threatened the complainant by putting his illegal arms on the temple of the complainant and threatening him to get a TV of L.G. company sent to him. There is further allegation of assault and snatching of gold chain worth Rs.25,000/. It is submitted that the complainant and the witnesses have supported the prosecution case. So far as the other points with respect to the past enmity between the parties etc. are concerned, the same are the defence of the petitioner which are not to be looked into at this stage. The learned trial Court has rightly taken cognizance in the matter. There is no



merit in this application and the same be dismissed.

7. Having heard learned counsel for the parties and having perused the material on record specially the contents of the complaint petition and the statement of the complainant recorded on solemn affirmation, this Court finds that not only the petitioner is named in the complaint but there is direct allegation against him of having committed overt act along with others.

8. Taking into consideration the allegations levelled in the complaint together with the same having been supported by the complainant in his statement on solemn affirmation, the Court finds no illegality in the order taking cognizance, impugned herein.

9. 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 SCC 269* has held that the complaint in its entirety is to be examined and the Court has no jurisdiction to examine it's correctness. Similar was the decision of the Hon'ble Supreme Court in the case of *Pratibha Rani vs. Suraj Kumar & Anr.; (1985) 2 SCC 370*.

10. Having heard learned counsel for the parties and having perused the material on record including the contents of



the complaint petition, the statement of the complainant on solemn affirmation and the decisions of the Hon’ble Supreme Court as referred to herein above, the Court finds no merit in the instant application.

11. The application is dismissed.

(Partha Sarthy, J)

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