

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.7306 of 2024

Arising Out of PS. Case No.-7040 Year-2021 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Savita Jain W/O Sri Vikash Jain R/O C-5/26, Safdarjung, Development Area, P.S- Hauz Khas, New Delhi-110016
 2. Sanjay Jain S/O Sri Chittarmal Patni R/O House No. C-100, Greater Kailash-1, P.S- Greater Kailash- New Delhi-110048.
 3. Kavita Jain W/O Sri Sanjay Jain R/O House No. C-100, Greater Kailash-1, P.S- Greater Kailash- New Delhi-110048.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Pankaj Jain S/O Late Shri K.C. Jain Permanent Resident Nimbus 1303m Paramount Symphony, Crossing Republic, Ghaziabad Ghaziabad,201009 Of Presently Residing At 51-52, Jhelum Apartment, Rajendra Nagar, P.S- Kadam Kuan, Distt.- Patna (bihar)-800016.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Rajesh Ranjan, Advocate
For the State	:	Mr.Amitesh Kumar, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

3 18-07-2024 Heard the parties.

2. Notice has been validly served on opposite party
no. 2.

3. The present application has been filed on behalf of
the petitioners for quashing the order dated 21.06.2023 passed
by the learned Additional Sessions Judge, XVIII, Patna in Cr.
Revision No. 237 of 2022 whereby the learned Additional
Sessions Judge has dismissed the aforesaid criminal revision
application and affirmed the order dated 04.01.2022 passed in



Complaint Case No. 7040(C) of 2021 by which the learned Magistrate, Second class, Patna has taken cognizance against the petitioners for the offence under Sections 323 read with 34 of the Indian Penal Code, 1860 and issued summons to all the accused persons including the petitioners.

4. The facts giving rise to the present application is that O.P no.2 filed the present complaint case wherein the complainant alleged that his father died on 28.08.2021 due to heart attack. It is further stated by the O.P No.2 that the persons who are accused in the complaint are his sisters, brother-in-law and his mother. The O.P No.2 alleges that the intention of his sisters and brothers- in-law was to usurp the properties of his father and his mother was supporting them to which the complainant had protested. On 12.09.2021, when he woke up for drinking water, he saw his sisters, brothers-in-law and mother distributing his father's bank documents including cheque books, fixed deposits, gold & silver jewellery among themselves. When the O.P No.2 protested, the petitioner no. 02 namely Sanjay Jain caught hold of him and his mother and sisters namely Kavita Jain and Savita Jain tore his clothes, bite him and thereupon petitioner no. 03 brought red chili powder from the kitchen and spread all over his body and eyes. The O.P



no.2 stated that he was rescued by his wife and two sons from the accused persons. It is further alleged by the O.P no.2 that the accused persons without his consent went to the office of his father situated at RBI Quarters, Road No. 10, Rajendra Nagar and took all valuable documents, signed cheque book of the O.P no.2 and his wife.

5. Learned counsel for the petitioner submits that the opposite party no. 2 was examined on S.A while his wife Arpana Jain and son Vedant Jain appeared as witnesses during the course of inquiry. After completion of inquiry u/s 202 of the Cr.P.C, the learned Magistrate, by an order dated 04/01/2022 took cognizance against the petitioners and also issued processes against them. He further submits that against the order of the Magistrate, the petitioners preferred Cr. Revision No. 237 of 2022, which stood dismissed vide order dated 21.06.2023.

6. It has been submitted by learned counsel for the petitioners that allegations made in the complaint petition are false and baseless. The present criminal proceeding has been initiated with the sole purpose to harass the petitioners.

7. It has been submitted by learned counsel for the petitioners that the petitioner no. 1 and 3 are sisters of Opposite



Party No. 02 while the petitioner no.2 is the brother-in-law of the opposite party no. 2. Perusal of the statements made in the written report dated 12.09.2021 addressed to the Kadam Kuan Police Station and written report dated 06.10.2021 addressed to the Deputy Superintendent of Police as well as those made in the complaint petition clearly shows fabrication of facts.

8. Learned counsel submits that the O.P No.2 after the death of his father on 28/08/2021 threw out his mother from her own home and grabbed the entire property by forging the documents. He also forcibly occupied the office, which was purchased by his mother in her own name.

9. It has further been submitted that the petitioner nos.1 and 3 have supported their mother and requested the O.P no.2 to maintain her with due dignity and respect. However, the O.P no.2 became annoyed with his sisters and in order to harass them and also to put pressure upon them, he lodged the present false and fabricated case after inordinate delay of more than 75 days for which no explanation was furnished. As per the complaint petition the alleged occurrence took place on 12/09/2021 but the present complaint was filed on 27/11/2021.

10. The mother of the opposite party no. 2 moved before the Sub- Divisional Magistrate, Patna under the



provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and the learned Sub Divisional Magistrate, Sadar, Patna by order dated 20/08/2022 directed the O.P no.2 and his wife to handover the possession of the office premises. Against the aforesaid order, the opposite party no. 2 filed C.W.J.C No. 14472/2022 before this Court, which was disposed of by an order dated 02/01/2023 directing the O.P no.2 to maintain his mother so that her protection of life and property cannot be jeopardized by his action.

11. It has also been submitted that the mother of the opposite party no. 2, who is also accused in the present case, has also filed a case vide Kadamkuan P.S Case No.447/2022 against the O.P no.2, his wife namely Arpana Jain and his son namely Vedant Jain for forgery and fraud committed by them. But the learned Magistrate and the Additional District Judge have failed to consider these facts and have taken cognizance against these petitioners and dismissed the revision.

12. Learned APP for the State has supported the cognizance order.

13. I have considered the submissions of learned counsel for the petitioners and learned APP for the State.

14. The petitioner nos. 1 and 3 are the own sisters of



opposite party no. 2 whereas petitioner no. 2 is the brother-in-law of the opposite party no. 2. He has made certain allegations in the complaint which *prima facie* seem to be *mala fide*. It is an admitted position that the mother of the opposite party no. 2 has moved before the Sub Divisional Officer, Patna under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and the Sub Divisional Judicial Magistrate, vide order dated 20.08.2022 directed the opposite party no. 2 to hand over the possession of the office premises to his mother and also to maintain good behaviour with her. It also appears that the mother of the opposite party no. 2 had also filed an FIR vide Kadamkaun P.S. Case No. 447 of 2022 against the opposite party no. 2 and his wife and son.

15. In view of the aforesaid facts this Court is of the opinion that the present FIR is a malicious one lodged against the petitioners in order to wreak vengeance due to personal grudge. Moreover, the impugned order by which cognizance has been taken against the petitioners is a mechanical order and is in teeth of the law laid down by the Hon'ble Supreme Court in the case of **Pepsi Food Ltd Vs. Special Judicial Magistrate** reported in **(1998) 5 SCC 749**.

16. Accordingly, the order dated 21.06.2023 passed by



the Additional Sessions Judge, XVIII, Patna in Cr. Revision No. 237 of 2022 and also the order dated 04.01.2022 passed by learned Magistrate in Complaint Case No. 7040(C) of 2021 are hereby quashed.

17. Accordingly, this application is allowed.

(Sandeep Kumar, J)

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