

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.2819 of 2024**

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

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1. Kusum Devi Jain @ Kusum Jain W/O Late Kailash Chand Jain R/O 51-52, Jhelum Apartment, Rajendra Nagar, Police Station- Kadam Kuan, Distt.- Patna (BIHAR)-800016.
  2. Rachna Jain W/O Sri Vikas Jain R/O 311, Jefferson Dr., Pittsburgh, Pa-15228, Unites States Of America.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Pankaj Jain S/O Late Shri K.C. Jain R/O Nimbus 1303, 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

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**Appearance :**

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| For the Petitioner/s | : | Mr.Rajesh Ranjan, Advocate |
| For the State        | : | Mr. Shyam Kumar Singh, APP |

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**CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR**  
**ORAL ORDER**

3      11-07-2024                      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 04.01.2022 passed  
in Complaint Case No. 7040(C) of 2021 by the learned Judicial  
Magistrate, Second class, Patna by which the learned Judicial  
Magistrate has taken cognizance of the offence punishable  
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. The O.P No.2 further alleged that 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, Savita Jain and Rachna Jain respectively tore his clothes, bite him with their teeth 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. It is also alleged that the accused persons took all the jewellery with them to Delhi.

5. It has further been stated that the O.P 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 his order dated 04/01/2022 erroneously took cognizance of offence u/s 323/34 of the Indian Penal Code and issued processes against the accused persons including the petitioners.

6. Learned counsel for the petitioners submits that the petitioners are innocent and have committed no offence as alleged and have been falsely implicated in the present case. It is also submitted that no such occurrence as alleged in the complaint petition has taken place.

7. Learned counsel submits that the allegations made in the Complaint Petition and statement furnished by the O.P no.2 and inquiry witnesses are false and baseless. The present criminal proceeding has been initiated with the sole purpose of



harassing the petitioners.

8. It has been submitted by learned counsel for the petitioners that the petitioner no. 1 is the mother of the Opposite Party No. 02 while the petitioner no.2 is his sister who is now a citizen of USA. From 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 the fabrication of facts inasmuch as the name of the petitioner no.1 was added as one of the accused while in earlier complaint there was no allegation against her.

9. Learned counsel submits that the O.P No.2 after the death of his father on 28/08/2021 threw out the petitioner no.1 from her own home and grabbed the entire property by forging the documents. He also forcibly occupied the office, which was purchased by the petitioner no.1 in her own name.

10. It has further been submitted that the petitioner no.2 along with her other sisters 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 an inordinate delay of more than 75 days for which no explanation was provided. As per the complaint petition the alleged occurrence took place on 12/09/2021 but the present complaint was filed on 27/11/2021.

11. The petitioner no.1 moved before the Sub-Divisional Magistrate, Patna under the provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. 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 belonging to the petitioner no.1 and also to maintain good behavior towards her.

12. Learned counsel submits that the O.P no.2 filed C.W.J.C No. 14472/2022 against the aforesaid order before this Court which was disposed of by order dated 02/01/2023 wherein the Court was pleased to hold that the O.P no.2 was legally bound to maintain his mother so that her protection of life and property cannot be jeopardized by his action.

13. The petitioner no.1 has also instituted Kadamkuan P.S case no.447/2022 u/s 120B, 420,468,489,471,506 of the Indian Penal Code and Section 66,66(c), (D),71 of the Information Technology Act against the O.P no.2, his wife



namely Arpana Jain and his son namely Vedant Jain for forgery and fraud committed by them. The said accused persons forged the signature of the petitioner no.1 and ousted her from M/s Saraogi Oxygen Pvt. Ltd. and M/s Mohini Farms Pvt. Ltd. and in her place Arpana Jain and Vedant Jain were made directors by forging the signature of Kusum Jain on board resolution.

14. Learned counsel submits that the O.P no.2 has committed acts of forgery in the year 2021 itself and since the petitioner no.1 is supported by her daughters, the O.P no. 2 instituted the present false and fabricated case only to put pressure upon them. Learned Magistrate has failed to consider that the allegations made in the complaint petition were absurd and improbable and the present false and fabricated case was lodged only to harass the petitioners.

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

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

17. The petitioners are the widow mother and the sister of the complainant-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 petitioner no. 2 is



a US citizen and petitioner no. 1 is 73 years old and for her maintenance orders have been passed up to this Court under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

18. Considering the aforesaid facts and also the fact that the impugned order 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** and also the fact that the prosecution of the petitioners is a *mala fide* prosecution, this application is allowed.

19. Accordingly, the order dated 04.01.2022 passed by Judicial Magistrate, Second class, Patna/concerned Court in connection with Complaint Case No. 7040(C) of 2021, is hereby quashed.

**(Sandeep Kumar, J)**

P. Kumar

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