

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.26680 of 2017

Arising Out of PS. Case No.-877 Year-2016 Thana- BHAGALPUR COMPLAINT CASE
District- Bhagalpur

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1. Baby Devi, W/o Late Dhruv Narayan Prasad,
 2. Sunil Kumar,
 3. Anil Kumar, Both are Sons of Jagdish Nonia, All are R/o Village-Jamgaon, P.S.- Jagdishpur, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sanjiv Kumar, Son of Late Madho Lal Mandal, R/o Presently Husainabad, Jagdamba Chowk, P.S.- Mojahidpur, District- Bhagalpur, Permanent R/o Village- Jamgon, P.S.- Jadishpur, District- Bhagalpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar, Advocate
For the O.P. No. 2	:	Mr. Arun Kumar Tiwary, Advocate
		Mr. Mritunjay Kumar, Advocate
For the State	:	Mr. Indra Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

6 07-01-2025 Heard Mr. Sanjay Kumar, learned counsel appearing for the petitioners, Mr. Arun Kumar Tiwary, learned counsel for the O.P. No.2 and Mr. Indra Kumar Singh, learned APP for the State.

2. The instant petition has been filed under section 482 of the Code of Criminal Procedure (in short 'Cr.P.C.') with a prayer to quash the order dated 27.10.2016 passed by the court of learned Chief Judicial Magistrate, Bhagalpur in Complaint Case No. 877 of 2016 by which the cognizance of the offences



under Sections 323, 354B, 379, 504/149 of the Indian Penal Code (in short 'IPC') has been taken against the petitioners and the learned trial court has summoned the petitioners to face the trial for the alleged offences.

3. Mr. Sanjay Kumar, learned counsel appearing for the petitioners has mainly taken the following grounds to assail the order impugned.

Firstly, the alleged occurrence has taken place on 23.05.2016 whereas the complaint was filed on 28.05.2016 without explaining the said delay period of five days.

Secondly, the Petitioner No. 1 who is a widow and wife of the brother of the O.P. No.2 had lodged Jagdishpur P.S. Case No. 235 of 2015 against the O.P. No.2 and others before the filing of the complaint by O.P. No.2 and that case was investigated in which the O.P. No.2 was chargesheeted, so, due to malice intention and after the filing of Mojahidpur P.S. Case No. 79 of 2016 by Petitioner No. 2 against the O.P. No.2 and others, the complaint of the instant matter was filed by the O.P. No. 2 with an intention to create pressure upon the petitioners.

Thirdly, the allegations levelled against the Petitioner No.1 who is a widow lady, are completely unbelievable as it was not possible for her to commit the alleged occurrence inside the



house of the O.P. No.2 while on the other hand, in Cr. Misc. No. 12468 of 2016 preferred by the O.P. No. 2 for the relief of anticipatory bail, the O.P. No.2 was granted the relief of anticipatory bail with a direction to allow the informant (Petitioner No.1) to enjoy her share of the property in her matrimonial house and in this regard, the order dated 16.03.2016 passed in the said Criminal Miscellaneous Petition may be perused.

Fourthly, the instant matter is based on a complaint but the same was not supported with an affidavit which is a clear violation of the principles laid down by the Hon'ble Supreme Court in the case of **Priyanka Srivastava and Another vs. State of Uttar Pradesh and Others** reported in (2015) 6 Supreme Court Cases 287.

4. On the other hand, Mr. Arun Kumar Tiwary, learned counsel appearing for the O.P. No. 2 has vehemently opposed this petition mainly on this ground that earlier two co-accused persons namely, Dhiraj Kumar and Niraj Kumar preferred Cr. Misc. No. 25579 of 2017 against the same order which is under challenge in the present Criminal Miscellaneous Petition with the same prayer which was heard on merit by the then Coordinate Bench of this Court and the same was



dismissed with the observation that there were *prima facie* materials to summon the said co-accused persons. It is further submitted by learned counsel that the allegations levelled against the petitioners are more serious than the co-accused Dhiraj Kumar and Niraj Kumar who are facing trial and the delay having taken place in filing the complaint has been explained by the O.P. No.2 in his complaint itself and further, there is sufficient documentary evidence to prove the physical assault committed with the O.P. No.2 by the petitioners and others and in this regard, several documents showing the medical treatment of the O.P. No.2 as well as referring him by the police to the hospital, have been filed with the Counter Affidavit.

5. Heard both the sides and perused the order impugned and other relevant materials. As per the allegations, on 23.05.2016, the accused persons including the petitioners entered into the house of the O.P. No.2 and started abusing him and on the opposition made by the O.P. No.2, the Petitioner No.1 directed the other co-accused persons to assault the O.P. No.2 and his family members, thereafter, an occurrence of assault took place with the O.P. No.2 and his family members and during that course, criminal force was used with the wife of



the O.P. No.2 with an intention to outrage her modesty by tearing her clothes and a gold chain and cash amount of Rs. 7,000/- were snatched by the accused from the prosecution party. These allegations are relevant to the offences of which cognizance has been taken. Though, before filing the complaint case two cases first by Petitioner No.1 and second by Petitioner No.2 had been filed against the O.P. No.2 but merely on account of these cases, the allegations levelled by the O.P. No.2, particularly, when there is medical evidence in support of his allegations and also there is a reasonable explanation regarding the delay in filing the complaint, should not be disbelieved completely. The O.P. No.2 has filed relevant documents with his Counter Affidavit as Annexure-1 and 2 series which show that he firstly approached to the police station concerned on the same day of the alleged occurrence i.e. 23.05.2016, on that very day, the petitioner was referred to the Sadar Hospital, Bhagalpur by the police officer of the concerned police station by sending a written application for getting the O.P. No.2 examined medically and thereafter, the necessary medical treatment was provided to the O.P. No.2 regarding which the documents (Annexure-2 series of the Counter Affidavit) are relevant, so, in view of these circumstances, the delay having taken place in



filing the complaint by the O.P. No.2 cannot render his case to be totally unbelievable at this stage and further, the Annexure-2 series support the allegation of physical assault to some extent and in the complaint, it has been mentioned by the O.P. No.2 that despite giving information to the police, no case was lodged, so, the complaint was being filed in the said compelling situation. So far as the requirement as to filing an affidavit by O.P. No.2 in support of the complaint's allegations with the complaint is concerned, this Court finds that the principle laid down by the Hon'ble Supreme Court in the case of **Priyanka Srivastava (Supra)** is not applicable in the present matter as in view of the principle laid down in this referred judgment, an affidavit is required when an application is filed with an intention to invoke the jurisdiction of the Magistrate under Section 156(3) of Cr.P.C. and the requirement of such affidavit is necessary to curb the normal practice of preferring applications under Section 156(3) of Cr.P.C. in a routine and casual manner without any responsibility merely to harass certain persons and in this regard, the Paragraph No. 30 of the aforesaid cited judgment is relevant and the same is being reproduced as under:-

“30. In our considered opinion, a stage has come in this country where Section 156(3) CrPC



applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.”

As per the provisions of sub-Section (1) of Section 190 of Cr.P.C., a Magistrate may take cognizance of any offence upon receiving a complaint of facts which constitute such offence and the said provision does not make the requirement of any affidavit in support of such complaint and in the instant matter, in the complaint, the O.P. No.2 made a prayer before the trial court to take cognizance of the alleged offences against the accused and no prayer was made to send the complaint under Section 156(3) of Cr.P.C. for investigation. Furthermore, the purpose of the requirement of said affidavit is only to make one



more responsible, who files an application with a prayer to send the same under Section 156(3) of Cr.P.C. to the police, so that such person can be stopped from filing frivolous applications only with an intention to harass the other. When a Magistrate himself proceeds on a complaint under Section 200 Cr.P.C. then the Magistrate is first bound to examine the complainant and his witnesses who are present on oath and only thereafter or after the inquiry or investigation as the case may be, the summoning order can be passed and in such a situation non filing the affidavit by the complainant at the initial stage in support of his/her complaint cannot be deemed to be fatal to his/her case, accordingly, this Court finds no force in the aforesaid ground taken by the petitioners as to the violation of the principle laid down by the Hon'ble Supreme Court in the aforesaid case by the O.P. No. 2.

6. Here, it is relevant to mention that the co-accused persons Dhiraj Kumar and Niraj Kumar challenged the same order which is under challenge in the instant case by filing Cr. Misc. No. 25579 of 2017 and then learned Coordinate Bench of this Court dismissed their petition with observing that there were *prima facie* material to summon the said co-accused and in view of the nature of allegation, the case of the present



petitioners cannot be segregated from the said co-accused. As such, this Court finds no merit in this petition and the order impugned has been rightly passed, so, the instant Criminal Miscellaneous Petition stands dismissed.

(Shailendra Singh, J)

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