IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.380 of 2018

CNR No. BRHC010519682017

Arising Out of PS. Case No.-1162 Year-2016 Thana- PATNA COMPLAINT CASE District-Patna

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1. Prabhat Kumar Sahu @ Prabhat Sahu, Son of Late Shashi Ranjan Sahu
2. Rajesh Kumar, Son of Late Shashi Ranjan Sahu
3. Neelam Sahu, Wife of Prabhat Kumar Sahu
4. Amar Prasad Sahu @ Amarnath Sahu, S/o Late Ambika Prasad Sahu
   All residents of 197-B Shri Krishna Puri, P.S.-S.K. Puri, District Patna

... ... Petitioner/s

Versus

1. The State Of Bihar.
2. Daya Shankar Tiwary, son of Late Baidyanath Tiwary, R/o Sheikpura Majar Gali, P.S.- Shastrinagar, District Patna ... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Harsh Singh, Advocate
		Mr. Tej Pratap Singh, Advocate
For the State	:	Mr. Yogendra Kumar, APP
For the O.P. No. 2	:	Mr. Sanjay Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR SINHA

ORAL ORDER

6 27-10-2026 Heard the parties.

2. The present application has been filed for quashing the order dated 09.08.2016 passed by the learned Judicial Magistrate 1st Class, Patna, in Complaint Case No. 1162(C) of 2016, whereby cognizance has been taken of offences punishable under Sections 323, 341, 504, 506 and 379 of the Indian Penal Code (hereinafter referred to as the IPC) and summons have been directed to be issued against the petitioners.

3. The petitioners seek interference by this Court on the ground that the criminal proceeding is maliciously instituted,

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that the allegations do not stand supported by the materials gathered in the inquiry and that the impugned order itself suffers from a serious infirmity inasmuch as Section 379 IPC appears to have been inserted by hand without the initials of the learned Magistrate.

4. At the outset, it is submitted that during the pendency of the present application, Petitioner No. 4 has died. Accordingly, the present application, insofar as it relates to Petitioner No. 4, has become infructuous. The present application, therefore, survives for consideration only in respect of Petitioner Nos. 1, 2 and 3, and the matter is being considered accordingly.

Factual Background:

5. The prosecution case, as disclosed in the complaint petition, is that the complainant, who is a journalist by profession, was known to the petitioners from before. Petitioner No. 1 was allegedly carrying on business through M/s Ashoka Bajaj Pvt. Ltd., and the complainant claims to have advanced a sum of Rs. 15,00,000/- on the assurance that he would be made a partner in the business. According to the complainant, the necessary documents were never executed and, after the closure of the showroom, the petitioners started another business in the

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name of ‘Indian Summer Café’ even in that venture he was not made a partner, as assured.

6. It is further alleged that, when the complainant demanded the return of his money, petitioner No. 1 issued two cheques, one of which, for a sum of Rs. 5,00,000/-, was dishonoured. The complainant claims that, after he issued a legal notice, the petitioners intercepted him near Magadh Mahila College on 08.04.2016, assaulted and abused him, restrained his movement, threatened him and took away certain papers, cash amounting to Rs. 800/- and his wristwatch and all this happened in the presence of complainant’s friends.

7. On the basis of the aforesaid allegations, the complainant filed Complaint Case No. 1162(C) of 2016. The learned Judicial Magistrate 1st Class, Patna, by order dated 09.08.2016, took cognizance of offences punishable under Sections 323, 341, 504, 506 and 379 IPC.

8. The petitioners contend that the complaint has been instituted by suppressing the real background of the dispute. According to them, a writ petition bearing C.W.J.C. No. 18790 of 2015 had already been instituted before this Court by M/s Ashoka Enterprises Pvt. Ltd., through its Director i.e. petitioner No. 3, challenging the auction sale of certain properties in favor

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of Opposite Party No. 2/complainant. By order dated 22.01.2016, this Court had directed the parties to maintain status quo in respect of the properties in question. The complainant, who had purchased one of the properties in auction, and the witness no.1 was subsequently impleaded as a respondent in the writ petition by order dated 12.02.2016.

9. The petitioners further contend that the complainant was not happy with the *status-quo* order and therefore, the present complaint was instituted in order to pressurise them into withdrawing the aforesaid writ petition. They deny the occurrence alleged in the complaint and submit that the criminal proceeding is in the nature of retaliation to the continuation of the dispute arising out of the auction proceedings and the pending civil litigation.

10. The petitioners have also relied upon the depositions of the two witnesses examined in support of the complaint. According to them, the witnesses have not supported the allegations regarding the taking away of the complainant's wristwatch, and one of the witnesses has stated that the complainant was also abusing the petitioners. It is further submitted that the friends who were allegedly present at the place of occurrence have not been named or examined by the

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complainant.

11. Another circumstance relied upon by the petitioners by way of supplementary affidavit is that they subsequently came to know of another criminal case instituted against petitioners Nos. 1 to 3 on 10.06.2016, on the basis of a written complaint dated 08.06.2016 submitted by the complainant to the Senior Superintendent of Police, Patna. The said case also concerns the auction-purchased property and the alleged violation of the status quo order passed by this Court.

12. The petitioners contend that the aforesaid circumstances, when considered together, demonstrate that the complainant has resorted to successive criminal proceedings to exert pressure upon them in the pending writ litigation. They further submit that the summons issued pursuant to the impugned order were not served because an incorrect address had been furnished by the complainant. According to them, non-bailable warrants were subsequently issued without awaiting the service report of the summons, and they learnt of the present proceeding only when the police arrived at their residence on 02.12.2017.

13. The petitioners have also specifically questioned the authenticity of the impugned cognizance order. It is

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submitted that Section 379 IPC appears to have been inserted in handwriting in the order dated 09.08.2016, without the initials of the presiding officer, and that another provision appears to have been struck out without authentication. On this basis, the petitioners contend that the order requires serious scrutiny and that the continuation of the prosecution, in the circumstances pleaded, would amount to an abuse of the process of the court.

Findings:

14. This Court has considered the submissions advanced on behalf of the parties and has perused the materials placed on record, including the complaint petition, the depositions of the inquiry witnesses, the impugned cognizance order and the documents relating to the pending writ proceedings before this Court.

15. It is well settled that the inherent jurisdiction of the High Court is intended to prevent abuse of the process of any court and to secure the ends of justice. At the same time, such jurisdiction is extraordinary in nature and must be exercised with due care and circumspection. The Court is not required to conduct a detailed examination of the evidence or to determine the guilt or innocence of the accused at this stage. However, where the materials available on record disclose

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circumstances which, when considered together, indicate that the criminal proceeding has been instituted for an ulterior purpose, the Court is not precluded from examining those circumstances merely because the complaint has been drafted in a manner which, on its face, refers to the ingredients of the alleged offences.

16. In **State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335**, the Hon'ble Supreme Court identified illustrative categories of cases in which the High Court may exercise its inherent or extraordinary jurisdiction to quash criminal proceedings. These include cases where the allegations, even if accepted in their entirety, do not prima facie constitute an offence, where the allegations are inherently improbable, or where the proceeding is manifestly attended with mala fides and has been instituted with an ulterior motive to wreak vengeance.

17. The principles governing the exercise of inherent jurisdiction have also been reiterated in **Mahmood Ali v. State of U.P., (2023) 10 SCC 544**. The Supreme Court observed that, where mala fides or an ulterior motive is alleged, the Court may examine the attending circumstances emerging from the record, with due care and circumspection, rather than mechanically accepting the form in which the allegations have been presented.

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18. In the present case, the complaint has to be examined in the background of the dispute between the parties concerning the auction sale of properties and the pending writ petition bearing C.W.J.C. No. 18790 of 2015. The materials placed on record indicate that the aforesaid writ petition had been instituted before the alleged occurrence dated 08.04.2016. By order dated 22.01.2016, this Court directed the parties to maintain status quo in respect of the properties in question. The complainant, who was the successful auction purchaser of one of the properties, was subsequently impleaded in the writ proceeding by order dated 12.02.2016. The complainant was naturally aggrieved by the *status-quo* order.

19. These dates assume relevance because the present complaint was instituted in April 2016, after the aforesaid orders had been passed in the writ proceeding. The petitioners have specifically asserted that the complainant was interested in securing the withdrawal of the writ petition and that the criminal complaint was instituted to exert pressure upon them. The petitioners have also relied upon the fact that another criminal case was instituted against Petitioners Nos. 1 to 3 on 10.06.2016, on the basis of a written complaint dated 08.06.2016 submitted by the complainant to the Senior

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Superintendent of Police, Patna. The allegations in the subsequent case also relate to the auction-purchased property and the dispute concerning possession and the status quo order.

20. The petitioners have also disputed the allegations made in the complaint regarding the alleged assault, wrongful restraint, criminal intimidation and taking away of the complainant's belongings. They have relied upon the depositions of the two witnesses examined during the inquiry. According to the petitioners, Witness No. 1 has not supported the allegation concerning the taking away of money and the wristwatch, while the other witness has also not supported the allegation concerning the wristwatch. It has further been pointed out that, although the complainant claimed that his friends had arrived at the place of occurrence and intervened in the matter, those persons have not been examined in support of the complaint.

21. The Court is conscious that the absence of corroboration by a witness, or the failure to examine a particular person, cannot by itself establish that an allegation is false. Nor would a contradiction in the preliminary evidence ordinarily justify a detailed assessment of the credibility of witnesses in proceedings under Section 482 CrPC. However, where the petitioners rely upon the preliminary evidence as part of a larger

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challenge to the bona fides of the prosecution, the Court may consider the nature of the material brought on record, without undertaking the function of the trial court. The significance of these circumstances must therefore be assessed alongside the documentary record relating to the pending litigation and the other grounds raised in the application.

22. It is also necessary to examine the ingredients of the offences for which cognizance has been taken. The mere use of expressions such as assault, abuse, threat or snatching in a complaint does not dispense with the requirement that the facts alleged must disclose the essential ingredients of the corresponding offence. The petitioners have also alleged irregularity in the impugned cognizance order. The petitioners have specifically asserted that Section 379 IPC appears to have been inserted by hand in the order dated 09.08.2016 without the initials of the learned Magistrate. They have further alleged that another provision appears to have been struck out without authentication. According to the petitioners, these circumstances raise a serious doubt as to whether the impugned order accurately records the judicial decision taken by the learned Magistrate.

23. The principal question which arises for

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consideration is whether the allegations made in the complaint petition, even if taken at their face value and accepted in their entirety, disclose the essential ingredients of the offences punishable under Sections 323, 341, 504, 506 and 379 of the Indian Penal Code. The exercise of jurisdiction under Section 482 of the Code of Criminal Procedure, 1973, requires the Court to examine whether the allegations constitute the offences for which cognizance has been taken or whether the continuation of the criminal proceeding would amount to an abuse of the process of the court.

24. It is well settled that the mere mention of the provisions of the penal law in a complaint does not, by itself, justify the initiation or continuation of criminal proceedings. The factual allegations must disclose the essential ingredients of the offences alleged. Where the allegations, even if accepted in their entirety, fail to satisfy the statutory requirements of the offences, the continuation of the proceeding cannot be justified merely on the basis of the conclusions drawn by the complainant.

25. Having considered the complaint petition, the statement of the complainant recorded on solemn affirmation under Section 200 of the Code of Criminal Procedure, the

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statements of the inquiry witnesses recorded under Section 202 of the Code, and the impugned order dated 09.08.2016, this Court finds that the allegations are required to be examined in the light of the essential ingredients of the offences for which the learned Magistrate has found a prima facie case.

26. The complaint arises out of a monetary dispute relating to the alleged payment of Rs. 15,00,000/- by the complainant to some of the accused persons for the purpose of making him a partner in a business. The complainant alleges that he was not made a partner and that the cheques subsequently issued to him were dishonoured on account of stop-payment instructions. The allegations concerning the incident dated 08.04.2016 have to be considered separately from the aforesaid monetary dispute, since the existence of a civil or commercial dispute, by itself, neither establishes nor excludes the commission of a criminal offence.

27. So far as the offence punishable under Section 323 of the Indian Penal Code is concerned, the complainant has alleged that the accused persons assaulted him. Witness No. 1, Madhoop Kumar , however, has stated that he saw the complainant and the accused persons engaged in verbal altercation and that he attempted to intervene. He has not stated

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that the complainant was assaulted or that any bodily pain or injury was caused to him. Witness No. 2, Sudhiv Kumar @ Azad Kumar, has alleged that the accused persons assaulted the complainant, but the statement, as placed before this Court, does not disclose the particular acts by which hurt was caused. The material, therefore, reveals a material difference in the accounts of the two inquiry witnesses. The essential requirement of voluntarily causing hurt, therefore, must be found in the allegations and material on record and cannot be presumed merely from the existence of a quarrel.

28. With regard to Section 341 of the Indian Penal Code, the essential requirement is voluntary obstruction of a person so as to prevent that person from proceeding in a direction in which he has a right to proceed. The statements of the inquiry witnesses, as described above, refer to an altercation and an alleged assault, but do not independently describe any act by which the complainant was prevented from proceeding in a particular direction. Unless the allegation of interception or restraint in the complaint is supported by facts disclosing such obstruction, the mere fact that a quarrel took place at a public place would not, by itself, constitute wrongful restraint.

29. The allegation under Section 504 of the Indian

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Penal Code also requires consideration of its statutory ingredients. An allegation of abuse, without facts disclosing intentional insult and the requisite intention or knowledge that such provocation is likely to cause a breach of the peace or the commission of another offence, does not automatically attract the provision. Witness No. 1 has stated that both the complainant and the accused persons were abusing one another. The statement of Witness No. 2 also refers to verbal abuse, but the material presently described does not specify the words used or otherwise explain the circumstances from which the requisite intention or knowledge could be inferred. The learned Magistrate has recorded a conclusion that a prima facie case exists under Section 504, but has not identified the facts which satisfy these essential ingredients.

30. As regards Section 506 of the Indian Penal Code, the complainant has alleged that he was threatened with death, and Witness No. 2 has also referred to a threat to kill. The Court is conscious that a threat of injury may attract the provision when accompanied by the requisite intention to cause alarm or to compel the person threatened to do or omit an act. The mere use of threatening words, considered in isolation, is not sufficient in every case. The complaint and the supporting

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statement must disclose the necessary intention or circumstances contemplated by the provision. The impugned order does not discuss this aspect or indicate how the essential ingredients of criminal intimidation are made out from the material before the learned Magistrate.

31. The allegation under Section 379 of the Indian Penal Code is that the complainant's money and wristwatch were taken during the occurrence. Witness No. 1 has not supported the allegation of removal of any property. Witness No. 2 has stated that some papers were torn and some money was taken, but according to the statement placed before this Court, he has not referred to the alleged wristwatch. The Court recognises that the absence of corroboration by one witness does not, by itself, negate an allegation of theft. The material must, however, disclose a dishonest taking of movable property out of the possession of the complainant without his consent. The impugned order does not discuss the material particulars relevant to this requirement. The manner in which Section 379 appears to have been inserted in the final order without the initials of the learned Magistrate, casts a serious doubt over the authenticity and sanctity of the order, and therefore, the possibility of the order having been interpolated cannot be ruled

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out. However, no conclusive finding can be given on this aspect of matter without verification of the original records, and without due procedure having been followed for establishing interpolation.

32. This Court is mindful that, at the stage of taking cognizance, the learned Magistrate is not required to conduct a meticulous assessment of the evidence or to determine whether the allegations will ultimately result in conviction. However, the existence of a complaint and the repetition of the statutory expressions cannot substitute for the disclosure of the essential ingredients of the offences alleged. The Court must examine whether the allegations, taken at their face value and read as a whole, disclose the commission of the offences for which the criminal process has been set in motion.

33. In the present case, the impugned order records a general conclusion that a prima facie case is made out, without indicating how the essential ingredients of the respective offences are disclosed by the complaint and the statements recorded during the inquiry. The material differences between the statements of the two inquiry witnesses, the absence of specific particulars concerning certain alleged acts, and the failure of the order to explain the statutory basis for its

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conclusions are relevant to the legality of the exercise of jurisdiction. These circumstances must be considered cumulatively and not merely as isolated discrepancies.

34. In view of the foregoing discussion, this Court is of the considered opinion that the allegations contained in the complaint petition, when read in conjunction with the statement of the complainant recorded under Section 200 Cr.P.C. and the statements of the inquiry witnesses recorded under Section 202 Cr.P.C., do not disclose the essential ingredients necessary to constitute the offences for which the learned Judicial Magistrate First Class has taken cognizance. The material on record, even when taken at its face value, does not furnish a sufficient factual basis for attracting the penal provisions invoked, and the impugned order does not disclose any adequate consideration of the essential ingredients of the respective offences. The continuation of the criminal proceeding in such circumstances would serve no legitimate purpose and would amount to an abuse of the process of the Court.

35. This Court is, therefore, satisfied that the present case warrants interference in exercise of its inherent jurisdiction under Section 482 of the Code of Criminal Procedure. Accordingly, the order dated 09.08.2016 passed by the learned

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Judicial Magistrate First Class, Patna, in Complaint Case No. 1162(C) of 2016, whereby cognizance was taken against the petitioners, is hereby quashed and set aside. Consequently, the entire criminal proceeding arising out of the aforesaid complaint case, insofar as it relates to the surviving petitioners, stands quashed.

36. The application is, therefore, allowed.

(Alok Kumar Sinha, J)

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