

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.63583 of 2023**

Arising Out of PS. Case No.-135 Year-2023 Thana- NALANDA COMPLAINT CASE
District- Nalanda

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PARMANAND PRASAD Son of Late Baldeo Prasad R/o Mohalla -
Paharpura, P.S. - Bihar, Distt. - Nalanda

... .. Petitioner/s

Versus

1. The State of Bihar
2. Rohit Raj @ Manjit Kumar @ Mutur Son of Skand Mahto R/o Mohalla -
Paharpura, Near Cambridge School, P.S. - Bihar, Distt. - Nalanda, Pin
-803101.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rajesh Sinha, Advocate
For the Opposite Party/s : Dr. Mrityunjaya Kr.Gautam, APP

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

6 11-07-2024 1. Heard learned 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 5.7.2023 passed in Complaint Case
no.135 of 2023 whereby the learned Judicial Magistrate 1st
Class, Biharsharif (Nalanda) was pleased to take cognizance
under sections 323, 504 and 506 of the Indian Penal Code.

3. The prosecution case, based on the complaint filed by
the complainant-opposite party no.2 on 8.2.2023 in the Court of
learned Chief Judicial Magistrate, Nalanda, Biharsharif alleges
inter alia that on 8.1.2023, the petitioner put up a false and
malicious post on his facebook account of the complainant with



the Councillor and her husband and stating therein that the complainant was a liquor mafia, a cyber criminal and a person of loose character. The complainant states that he complained about the said post to the local residents and in the evening went to the house of the petitioner to enquire about the post. It is stated that the petitioner became very angry, started to abuse and said that the complainant was responsible for the loss in elections. He would write whatever he wanted and the complainant could do nothing about it. At this time, Vivekanand Sinha reached there. The petitioner said that he should be assaulted. Vivekanand Prasad started to assault with an iron rod with the intention to kill. The assault on the complainant's head was stopped with his hand as a result of which the complainant sustained injury in his hand and fingers. On Rajendra Prasad coming to the complainant's rescue, it is stated that the petitioner struck with a rod on his head which was stopped by Rajendra Prasad with his hand as a result of which he sustained injuries in his hand and fingers. The complainant states that they sustained serious injuries. The petitioner snatched a gold chain from the complainant's neck, the value of which was about Rs.45,000/. The petitioner was giving threats that the consequences of lodging a case will be bad. The complainant



states that he went to the police station where the police personnel asked him to get himself treated first. As such, the complainant went to the Sadar Hospital at Biharsharif where Rajendra Prasad was treated. The police personnel assured to take steps but they did not go to the place of occurrence. The complainant went to the police station a number of times and also made attempts to meet the Superintendent of Police, Nalanda. On being unable to meet him, the complainant sent a petition to him through registered post but still no action was taken. As such, the complainant filed the instant complaint after delay.

4. The statement of the complainant on solemn affirmation was recorded. Further the statements of the witnesses Rajendra Prasad, Arjun Kumar and Rajiv Kumar were recorded in course of enquiry. By order dated 5.7.2023, the learned Judicial Magistrate 1st Class, Biharsharif (Nalanda) was pleased to take cognizance in the case against which the instant application has been preferred.

5. It is submitted by learned counsel for the petitioner that the petitioner has been falsely implicated in the case. With respect to the occurrence of the same day i.e. 8.1.2023, on 8.1.2023 itself an FIR being Bihar P.S. Case no.28 of 2023 was



lodged by the petitioner under sections 341, 323, 447, 504, 506, 379 and 34 of the Indian Penal Code. A copy of the same is Annexure-2 to the petition. It is submitted by learned counsel for the petitioner that the manner of occurrence is other than what has been narrated in the complaint petition and is correctly described in the FIR (Annexure-2) lodged by the petitioner. Referring to the contents of the letter dated 6.9.2023 written by the Sub Divisional Police Officer, Sadar, Biharsharif, Nalanda to the Superintendent of Police, Naland (Annexure R/2 to the counter affidavit of opposite party no.2), learned counsel submits that the allegations in the FIR registered by the petitioner were found to be true and on conclusion of the investigation, chargesheet was submitted against three accused persons including Rajendra Prasad and Rajiv Kumar, both of whom have been named as witness in the instant complaint filed against the petitioner. It is further submitted that so far as the complaint is concerned, there is no reasonable explanation for the delay, no medical report has been brought on record, even therein the occurrence is of 8.1.2023 and the place of occurrence is the house of the petitioner. The registration of the earlier FIR has been suppressed in the complaint. It is submitted that on the face of it the same has been filed by the complainant only to set



up a defence for the persons described as witnesses therein. It is a clear case of malicious prosecution and as such, the order taking cognizance be quashed. In support of his submission, learned counsel for the petitioner has relied on the judgment in the case of *Kapil Agarwal and others vs. Sanjay Sharma and others; (2021) 5 SCC 524*.

6. The application is opposed by learned APP for the State and learned counsel for the opposite party no.2. It is submitted by learned counsel for the opposite party no.2 that reading of the complaint clearly makes out a case against the petitioner. The allegations in the complaint have been supported by the complainant in his statement on solemn affirmation as also the witnesses examined in course of enquiry. The learned trial Court has rightly taken cognizance in the case. With respect to the submissions made by learned counsel for the petitioner, it is submitted that the reason/motive for the occurrence has clearly been stated in the complaint. Further, the complaint also mentions the reason for the delay in lodging of the case. Other points raised on behalf of the petitioner are his defence which cannot be looked into at the present stage of taking cognizance. There is no illegality in the order taking cognizance and as such, the instant application be dismissed.



7. Having heard learned counsel for the parties and having perused the material on record, this Court finds that in the complaint (Annexure-1) filed by the complainant, there is no direct allegation against the petitioner along with one another of having abused and assaulted the complainant and others. Though the petitioner has made substantial points of an earlier FIR having been lodged by him being Bihar P.S. Case no.28 of 2023 on 8.1.2023 with respect to the occurrence of the same date as in the present complaint, the Investigating Officer having found the contents of the said FIR to be true and having submitted chargesheet no.194 of 2023 on 28.2.2023 together with the delay in filing of the instant complaint, in the opinion of the Court, these points being the defence of the petitioner could not have been looked into by the learned trial Court at the time of taking cognizance. The Court was required only to see the contents of the complaint petition together with the statement of the complainant and the witnesses examined in support of the complaint during enquiry. The Court did not have the jurisdiction to examine the correctness of the allegations made in the complaint. Reference may be made to the judgments of the Hon'ble Supreme Court in the case of *Pratibha Rani vs. Suraj Kumar & Anr.; (1985) 2 SCC 370* and



M/s. Medchl Chemicals & Pharma P. Ltd. vs. M/s. Biological E. Ltd. & Ors.; (2000) 3 SCC 269.

8. In view of the facts and circumstances of the case, in the opinion of the Court, there is no illegality in the order impugned dated 5.7.2023 passed in Complaint Case no.135C of 2023 by the learned Judicial Magistrate 1st Class, Biharsharif (Nalanda) taking cognizance under sections 323, 504 and 506 of the Indian Penal Code.

9. As such, the application stands dismissed.

10. However, the petitioner will be at liberty to raise all the points raised herein in the instant application, as also other points available to him, at an appropriate stage in the trial Court, which if raised, shall be considered and decided in accordance with law.

(Partha Sarthy, J)

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