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**(2009) 08 PAT CK 0060**  
**In the Patna High Court**  
**Case No : Cr. Misc. No. 15726 of 2007**

Nandu Sao and Others

APPELLANT

Vs

The State of Bihar and Dhananjay Kumar Gupta

RESPONDENT

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**Date of Decision :** 18-08-2009

**Acts Referred:**

**Citation :** (2009) 08 PAT CK 0060

**Final Decision :** Allowed

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### Judgement

Abhijit Sinha, J.—All the six petitioners have been arrayed as accused in Complaint Case No. 1935 (C) of 2004 and have prayed for the quashing of the order dated 9.2.2007 passed therein by Miss Saroj Kumari, Judicial Magistrate, First Class, Patna, whereby she has rejected the prayer of the petitioners for discharging them u/s 245 Cr.P.C. from the offence under Sections 323 and 379 IPC.

2. The prosecution case based on the complaint petition filed by one Dhananjay Kumar, impleaded herein as O.P. No. 2, on 17.8.2004 is that petitioner No. 1 and his son Sanjay Sao (petitioner No. 2) came to his house at about 8 P.M. on 15.8.2004 and informed him of his father-in-law being seriously ill and was required to be treated immediately whereupon the complainant took Rs. 20,000/- in cash and along with the aforesaid two accused rushed for his father-in-law's house at Bhutnath Road.

3. Having travelled for some distance both the accused made the complainant sit in a Maruti car and drove away. It is alleged that four persons namely Basu Sao, Yadu Sao, Krishna Sao and Bharat Sao were sitting in the car from before and as soon as the complainant sat then Nandu and Sanjay pointed a revolver each at him and threatened him to act as per their dictates failing which he would be killed and when the complainant protested they assaulted him on the head with revolver as a result whereof he became unconscious. On gaining conscious he found himself lying in a ditch near Sampatchak and his bag containing Rs. 20,000/- in cash was missing. His gold chain worth Rs. 8000/- was also missing.

In the morning the complainant is said to have informed the police at Sampatchak who refused to register the case and abusing him threatened him of implicating him in another case and shooed him away.

4. Hence the complaint.

5. It appears that three witnesses including Guria Devi the wife of the complainant were examined and from their evidence it transpires that the daughter of the petitioner No. 1 had lodged a case being Complaint Case No. 557 of 2002 against the complainant before the C.J.M., Nalanda prior to the lodging of the instant complaint. Evidence also came on record that daughter of petitioner No. 1 was married to the own brother-in-law (sala) of the complainant and case under Sections 498A IPC is pending between the parties. The matter appears to have been compromised but as torture of the daughter of the petitioner No. 1 continued another complaint being Complaint Case No. 269(C) of 2004 was again filed by the daughter of petitioner No. 1 on 7.6.2004 and it appears that it was in retaliation thereto that the present complaint has been filed on 17.8.2004.

6. The submissions on behalf of the petitioners is that the present complaint had been filed with the intention of reeking vengeance and to settle old scores. It is also submitted that the story of complainant being whisked away in the Maruti car appears to be highly improbable and absurd. In this context it was submitted that there was no injury report on the record since the allegation was of assault by revolver as a result whereof the complainant had become unconscious.

7. OP. No. 2 has appeared and though no show cause or written statement has been filed, oral submissions were advanced justifying the rejection of the prayer for discharge. It was submitted that prima facie the offence is made out against the petitioners and the learned Magistrate had rightly rejected their prayer for discharge.

8. The present case appears to be fully covered by the proposition of law initiated by the Apex Court in this case of State of Haryana and others Vs. Ch. Bhajan Lal and others, since the present case appears to have been filed with mala fide intentions for reeking vengeance on the accused as a result of the two complaint cases filed against the brother-in-law of the complainant by the daughter of petitioner No. 1. That apart the complainant appears to have conveniently suppressed / concealed material facts regarding the complaint cases u/s 498A IPC filed by the daughter of petitioner No. 1 against the brother-in-law of the complainant.

9. Since the complainant has raised the plea of having become unconscious as a result of the assault by the revolvers the injuries must have been serious and yet there is no mention of the complainant having been treated by a doctor or the availability of an injury report. That apart the allegation was that the complainant was forced into a Maruti car by petitioner Nos. 1 and 2 and 4 persons were already sitting in the car from before. The situation does not appeal to reason

since it is nearly impossible for seven persons to be accommodated in a Maruti car. In this view of the matter the submissions of the learned Counsel for the petitioners of the case being a false and concocted one appears to be very much plausible.

10. Admittedly there is pending litigations between the brother-in-law of the complainant and the daughter of petitioner No. 1. In such a situation one fails to understand how the complainant accompanied the petitioner Nos. 1 and 2. To my mind, the complaint appears to be a frivolous one based on allegations which appear to be full of absurdities.

11. In the facts and circumstances of the case power u/s 482 Cr.P.C. is required to be exercised for quashing the order refusing to discharge the petitioners.

12. Accordingly the criminal proceeding against the petitioners as also the impugned order are hereby quashed and the application is allowed.