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**(2006) 09 PAT CK 0003**

**In the Patna High Court**

**Case No :** Criminal Miscellaneous No. 15009 of 2005

Narayan Mehta and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

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**Date of Decision :** 18-09-2006

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 2(d), 482  
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

**Citation :** (2007) 1 PLJR 3

**Hon'ble Judges :** Rekha Kumari, J

**Bench :** Single Bench

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## Judgement

Rekha Kumari, J.—This is an application u/s 482 of the Code of Criminal Procedure for quashing the order dated 2.4.2005 passed by the learned Chief Judicial Magistrate, Purnea in Complaint Case No. 107/2005 by which he has taken cognizance under sections 147, 148, 149, 341, 342, 323, 307 I.P.C, against the petitioners for attempting to commit the murder of the Mukhiya Ram Kishore Chaudhary, the husband of the complainant. Heard both the sides.

2. It appears that the complainant (O.P. No. 2) Ganga Devi has lodged an F.I.R. against the petitioner Narayan Mehta, his sons and relatives for assaulting her husband Ram Kishore Chaudhary and his brother. On that F.I.R. Banmankhi P.S. Case No. 151/2002 was registered under sections 147, 148, 149, 341, 323, 342, 307 I.P.C. Subsequently on the death of the brother Satyadeo Singh of her husband, Section 302 I.P.C. was added. After investigation the police submitted final report giving benefit of doubt. In the meantime the complainant had filed a protest petition.

3. After receipt of the final report the learned Chief Judicial Magistrate proceeded with the protest petition. He recorded the statement of the complainant on S.A. and has examined eight witnesses produced by her including Ram Kishore Chaudhary. The learned Magistrate after considering the protest petition, the statement of the complainant on S.A. and the statement of the witnesses found a

prima facie case against the petitioners under the above sections of the Indian Penal Code for assaulting the husband of O.P. No. 2 and passed the impugned order.

4. Learned counsel for the petitioners submitted that the protest petition is not in the nature of complaint inasmuch as the name of the accused persons are not mentioned therein. He further submitted that the protest petition would show that there is no allegation against the petitioners in it and hence, in view of the decision of the Apex Court in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, , the impugned order is fit to be quashed. His further submission is that the protest petition would show that one Lalu Mehta was murdered in the alleged occurrence in which a police case was registered against the husband of O.P. No. 2 and others and in S.Tr. No. 317/2003 the husband of the complainant and others have been convicted u/s 302 I.P.C. and in that case the husband of the complainant had taken the defence that the prosecution party had assaulted them but that defence was not found probable and that in fact this case is a counter blast of the case filed against the husband of O.P. No. 2. It was also submitted by the learned counsel that no offence u/s 307 I.P.C. is made out on the allegations made in the protest petition and no injury report has been filed to show that any offence u/s 307 I.P.C. is made out in this case.

5. Learned counsel for O.P. No. 2 has filed a counter affidavit alongwith the statement of the witnesses and defended the impugned order.

6. As regards the first submission of the learned counsel for the petitioners, Section 2(d) of the Code of Criminal Procedure defines "complaint" as follows:

"complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report."

7. Therefore, a petition addressed to a Magistrate containing an allegation that an offence has been committed and ending with a prayer that the culprits be suitably dealt with is a complaint. There is no particular format for a complaint. This view finds support from the decision of the Apex Court in the case of Md. Yusuf vs. Asfaque Jahan, reported in 2006 (2) BCCJ 391. In this case also, the protest petition discloses allegation against petitioner No. 1 and others and they assaulted Ram Kishore Chaudhary as a result of which he became unconscious when he reached home. Therefore, it cannot be said that the protest petition is not complaint.

8. Then though the names of some of the petitioners are not mentioned in the protest petition, as from the statement of the complainant and the witnesses, their names have transpired as taking part in the occurrence, they can be summoned to face trial. Again though the husband of O.P. No. 2 has been convicted in S.Tr. No. 317/2003 this complaint case cannot be said to be counter blast to that case and mala fide as it appears that the police case in which the protest petition was filed was registered earlier than the case giving rise to S.Tr.

No. 317/2003. The impugned order also shows that the learned Chief Judicial Magistrate had found prima facie case against the petitioners. So, the impugned order cannot be said to be mala fide and cannot be quashed on that ground at this stage.

9. Then so far cognizance u/s 307 I.P.C. whether the allegation makes out a case u/s 307 I.P.C, or not would be considered at the time of framing of charge. No part of the impugned order can be quashed on this ground at this stage. In the result, I do not find merit in this case and it is, accordingly, dismissed.