

**Court of Kalpana Bharati, J.M. First Class cum A.M.,
Begusarai
Complt. Case-2205/2022**

Binita Devi VS. Mahendra Mahto and others.

DATE	ORDER	REMARKS
15/02/2023	I perused the record, on perusal it appears that the complainant Binita Kumari of village-Barbighi, P.S.-Balua, Dist. Begusarai, has filed this complaint case on- 13/12/2022 against Mahendra Mahto, Hare Ram Mahto, Chote Lal Kumar, Adit kumar Sukumari Devi, Sumitra devi, Shabnam Kumari, Manna Kumari, Simpi Kumari, Jyotish Kumar, Poonam Devi the court of learned CJM, Begusarai, who after taking cognizance transferred the case to this court for inquiry and trial and the same has been received by this court on 20/12/2022. The brief fact of the complainant's case is that on the day of occurrence the complainant was at home. All accused persons armed with Lathi, Bhala rod, entered the house of the complainant and started beating and abusing the complaint. She further deposed that Jyotish Kumar hit on the stomach of complaint which caused miscarriage. Hare Rama tried to disrobe her. Chote Lal Kumar snatched golden earrings from her ears. She further deposed that the reason for the incidence was that the accused person took a personal loan of 1 lakh from the complaint and on demand of the money all the accused person fumed and abused the complainant. Consequently the complainant went to the police station to lodge the fir but police did not register the case. During inquiry the complainant examined herself upon oath on 18/01/2023 and has produced three witnesses for examination u/s 202 of the Cr.P.C. Discussion on evidence adduced during enquiry Perused the complaint petition, S/A of the complainant, statement of the enquiry witness. Upon perusal the following facts appear: • The complainant in her SA said that the incident occurred on same date and time and supported the allegation made in the complaint petition. • EW 1 contradicted the complaint petition on the point who tried to outrage the modesty of the complainant and deposed a new improvement in the case that chotu has beaten the complainant with a pistol.	

Contd.

- EW2 also supported the allegation made in the complaint petition and admitted that this case was only filed because on demand of money the accused person refused to return and abused the complainant.
- EW 3 also supported the allegation and also deposed the same reason for the incidence.

Before proceeding further it is necessary to discuss some landmark decision of the on river court which have a significant bearing on this case

In Pepsi food Pvt. Ltd. Vs. Spl. J.M., (1998) 5 SCC 749, Hon'ble Supreme Court laid down the gold standard for summoning the accused. This oft quoted judgement has laid down that the court should treat the summoning of the accused as a serious matter involving interference with life and liberty of a person. The Apex Court observed that "Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set in motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording preliminary evidence before summoning the accused.

In Mehmood ul Rahman Vs. Khazir Mohd. Tunda, (2015) 12 SCC 420, Hon'ble Supreme Court highlighted again in detail the duty cast upon the magistracy while dealing with complaint cases. The Court held that "the reasons for summoning has to be assigned to show application of mind. The Magistrate is not to act as a post office in taking cognizance of each and every complaint filed before him and issue process as a matter of course.

Now upon perusal of the complaint petition, S/A of the complainant, deposition of Inquiry witnesses, materials available on the record and after hearing the Ld. counsel for the complainant, this court finds that the real bone of contention between both sides in the present complaint petition in nutshell has civil connotation, that is, money claim which is obvious from statements made in the complaint petition, and testimony of other witnesses. Cases of money claim is of purely civil in nature. However breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings.

Contd.	The test is whether the allegations in the complaint disclose a criminal offence or not. Further the veracity of allegations made in the complaint petition appears to be doubtful from the testimony of the complainant and Inquiry witness. A doctor prescription has been submitted on behalf of complainant mentioning date there in 01/01/2023 and 11/01/2023 but as per petition and testimony of other witness the incident took place on 08/12/2022. Also prescription is general in nature and does not mention anything about miscarriage. Also witnesses also did not deposed anything about the same. Now it is well settled law that without corroboration of complaint petition in material particular, a prima facie case which is sufficient for conducting further proceedings cannot be made out. Even otherwise, the material available on the record, on its own merit doesn't inspire confidence to enable this court to make out a prima facie case. Hence this court is of opinion that there is none of the sufficient material available on the record to proceed further and no prima facie criminal case is made out under section 147, 148, 149, 323, 447, 442, 379, 504, 354 of IPC 1860 and 27 of Arms Act is made out in this case. In the light of above facts and circumstances of this case the complaint petition is hereby dismissed u/s 203 of Cr.P.C . O/C is directed to consign the record to the record room accordingly.  J.M. 1st Class cum A.M Begusarai .	
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