

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.40559 of 2012

- =====
1. Brij Bihari Yadav S/O Sri Hari Prasad Yadav R/O Village - Dangauli, Police Station - Murar, District - Buxar
 2. Kanhaiya Yadav S/O Late Nathuni Yadav R/O Village - Dangauli, Police Station - Murar, District - Buxar
 3. Santosh Yadav S/O Kanhaiya Yadav R/O Village - Dangauli, Police Station - Murar, District - Buxar
 4. Vimlesh Kumar Yadav S/O Brij Bihari Yadav R/O Village - Dangauli, Police Station - Murar, District - Buxar

.... Petitioner/s

Versus

1. The State Of Bihar

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Jitendra Prasad Singh

For the Opposite Party/s : Mr. P.Mehta (App)

=====

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL ORDER

2 24-12-2014

Heard the parties.

The petitioners are aggrieved by the order dated 11.04.2012 as well as 22.08.2012 passed by the learned Sub Divisional Magistrate, Dumraon in connection with case No. 325 (M) of 2011, whereby a proceeding under Section 110 of the Code of Criminal Procedure was initiated and subsequently, by the later order under challenge, the

petitioners were asked to execute a bond with two sureties, each of Rs. 50,000/- .

It is submitted on behalf of the petitioners that the wife of the petitioner no. 1 had lodged a case against her agnates and co-villagers for the offences under various sections of the Indian Penal Code including Section 379, 504 and 323 of the Indian Penal Code. The aforesaid case was registered as Murar P.S. Case No. 42 of 2011. As a retaliation of that case, one Laljhari Devi wife of Dinesh Yadav also filed a case vide Murar P.S. Case No. 43 of 2011 against the petitioners and others for the offence under Sections 147, 341, 323, 379 and 504 of the Indian Penal Code and Section 27 of the Arms Act.

Both the parties, who are agnates and co-villagers, decided to end their disputes and went for compounding of the offences which were alleged against each other.

Learned counsel for the petitioners further submitted that this case, namely, Murar P.S. Case No. 43 of 2011 being only the case available on record as against the petitioners, the local Sub Inspector of Murar Police Station, for reasons inexplicable, filed a report before the Sub Divisional Magistrate on 01.04.2012 for initiating a proceeding under Section 110 of the Cr.P.C. against the petitioners. Section 110 of the Cr.P.C. delineates in detail as to for what category

of habitual offenders, such proceedings would be commenced/initiated. The report of the Sub Inspector refers to the only case against the petitioners namely Murar P.S. Case No. 43 of 2011 and on the strength of such case in which there has been a compounding, he has recommended for initiation of prosecution under Section 110 of the Cr.P.C.

After issuing notice to the petitioners, learned Sub Divisional Magistrate, Dumraon, vide order dated 22.08.2012, by taking reference to one case only, about which reference has been made earlier, directed the petitioners to execute a bond for keeping good behavior for a period of 3 years and two sureties of Rs. 50,000/ each.

Learned counsel for the petitioners submits that such an initiation of the proceedings under Section 110 of the Cr.P.C. is a callous misuse of power which has been given to the authorities.

Perused the records and the orders impugned.

This Court has no difficulty in holding that the commencement of the proceedings under Section 110 of the Cr.P.C. as against the petitioners is absolutely unwarranted, without substance and perhaps misuse of the powers given under the Code. This Court, for the present, refrains from asking for a show-cause notice as against the Police Officer, who recommended for such proceeding, and the

learned Sub Divisional Magistrate, who passed such an order. They are directed to be careful in future while exercising such powers which have serious consequences.

The orders dated 11.04.2012 and 22.08.2012 passed by the learned Sub Divisional Magistrate, Dumraon in case NO. 325(M) of 2011 is hereby quashed.

The application stands allowed.

(Ashutosh Kumar, J)

Jagdish/-

U		T	
---	--	---	--