

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38075 of 2009

Arising Out of PS.Case No. -04 Year- 2009 Thana Neema Chandpura, District- BEGUSARAI

1. Ajit Kumar, son of Santosh Kumar
2. Santosh Kumar, so of Bindeshwari Lal Das

Both resident of Naya Bazar, Ward No. 02, P.S. Saharsa, Distt. Saharsa.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

Appearance :

For the Petitioner/s : Dr. Alok Kr. Alok, Adv.

For the State : Mr. Jharkhandi Upadhyay, A.P.P.

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 09-03-2015

Heard learned counsel for the Petitioners and the State.

The Petitioners seek quashing of the order dated 25.7.2009 passed by the Chief Judicial Magistrate, Begusarai, in Neema Chandpura P.S. Case No. 04 of 2009 instituted under Sections 307 and 120B/34 of the Indian Penal Code.

The case of the Informant is that he had performed marriage with the daughter of Petitioner No. 2 for which reason he had purchased some land at Saharsa. After some years, the daughter-in-law of the Informant committed suicide by setting herself on fire upon which a substantive case was instituted by the Petitioner No. 2 against the Informant, his wife and son. Later on, the Petitioner No. 2 started to pressurize them to transfer a certain piece of land for maintaining the children of the deceased or else he would be killed. He then filed an Informatory petition before the Chief Judicial



Magistrate, Begusarai. Then the Informant also filed an application before the Chief Judicial Magistrate, Begusarai, for guardianship of two children at which the Petitioner No. 2 became more angry and started to threaten him. On the date of occurrence, the Petitioners along with two co-accused persons came near the house of the Informant and called for the Informant and his wife. When his wife stated that the Informant was not present, the miscreants fired on her but, he survived. Thereafter, they fired at the Shutter of the Informant's house and on the Notice Board of the Public Distribution System.

It has been submitted that the Petitioners have been implicated on account of earlier dispute between the Parties. Also the Petitioner No. 2 being the father of Petitioner No. 1 filed Neem Chand Pura P.S. Case No. 52 of 2007 in which the Informant and others had been put behind the Bars. It was to pressurize them into compromising the said case that the present First Information Report was instituted. During investigation, the case ended in a Final Report with the recommendation that the Informant be proceeded against under Sections 182 and 211 Indian Penal Code.

Further submission is that since there is an allegation of general firing of four shots but marks of only two shots were found on the Shutter of the Notice Board of the PDS shop, the present case should be disbelieved. Also the Petitioner No. 2 is a Government Servant posted at Sadar Hospital, Saharsa and apparently had no role

to play. The Petitioner No. 1 was also studying at that point in time in Chennai and was not available in the village on the date of occurrence.

On the last occasion, this Court had dismissed the prayer for quashing the application on the ground that the submissions were based on disputed questions of fact which could not be gone into at the stage of 482 Cr. P.C. but, the Hon'ble Supreme Court was of the view that the order was non-speaking.

On a consideration of the aforesaid facts which have been mentioned, this Court is convinced that it would be unreasonable for a Court to go into the background facts of a case and render it unbelievable at the threshold itself. The submissions of the Petitioners are matters of fact which can be assessed and evaluated only at the stage of Trial where it can be set up as defence.

In such view of the matter, the application stands once again dismissed.

The Trial Court is directed to expedite the Trial.

(Anjana Prakash, J)

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