

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.33675 of 2012

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1. Bhimal Roy, Son of Nagina Roy.
2. Sanchit Roy, Son of Nagina Roy.
3. Surendra Roy, Son of Sabha Roy.
4. Pramod Roy, Son of Manager Roy.
5. Gauri Roy, Son of Bhimal Roy.
All residence of Village- Parsa, P.O. Amardah, Police Station- Ishuapur,
District- Saran.

.... Petitioners.

Versus

1. The State of Bihar.
2. Manorama Devi, Wife of Ram Pravesh Manjhi, resident of Village-
Parsa, P.O. Amardah, Police Station- Ishuapur, District- Chapra at
Saran.

.... Opposite Parties.

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Appearance :

For the Petitioners : Mr. Rananjay Kumar, Advocate.
Mr. Chhateshwari Kumari, Advocate.
For the O.P. No. 2 : Mr. Shraddhanand Paswan, Advocate.
For the State : Mr. Jharkhandi Upadhyay, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL ORDER

3 10-03-2015 Heard learned counsel for the petitioners and learned
counsel for the State.

This is an application for quashing the order taking cognizance for offence under Sections 323, 337, 435 and 504 of the Indian Penal Code as well as Section 3(i)(x) of the S.C./S.T. Act passed by Shri Arun Kumar, Judicial Magistrate, 1st Class, Chapra, dated 05.08.2009 in Complaint Case No. 3953 of 2008.

Complaint filed with allegation that accused persons came to the house of complainant on 29.11.2008 while she was cooking food, abused her calling caste name as Harizan alleging

why she has not go to work at his field and abused, assaulted and set on fire the house of the complainant.

Learned counsel for the petitioners submits that earlier a complaint case had been filed with similar allegation with regard to occurrence dated 09.06.2008. The same complaint was sent for lodging F.I.R. under Section 156(3) of Cr.P.C. and police submitted Final Form but cognizance taken on protest by complainant. It has been submitted that repeated false case has been filed against the petitioners to harass.

However, cognizance has been taken after examining the complainant on oath and examination of five witnesses for offence under Sections 323, 337, 435 and 504 of Indian Penal Code and Section 3(i)(x) of S.C./S.T. Act.

However, from the allegation of complaint, there is allegation of abuse, assault and calling the victim by caste/harizan and a prima facie case is made out.

Learned counsel for the petitioners submits that cognizance under Section 3(i)(x) of the S.C./S.T. Act is not made out as the allegation is that calling the victim by harizan and harizan is not a caste name. It has further been submitted that petitioners have falsely been implicated concealing the fact that same allegation earlier filed with regard to the occurrence on

different dates.

However, allegation against the petitioners prima facie makes out an offence. It is not proper at this stage to decide whether allegations made are false or true, it is a matter of trial to be decided at the trial and it cannot be a ground for quashing the complaint or the order taking cognizance.

Having regard to the allegation made in the First Information Report prima facie makes out an offence and truth of allegation can be decided in trial. Hence it is not proper at this stage quashing the order taking cognizance.

However, the contention that offence under Section 3(i)(x) of S.C./S.T. act is made out or not is concern, the petitioners may raise issue at the stage of framing of the charge. If such issue is raised then the trial court shall consider the material on record to pass a proper and reasonable order.

With the above observation, this petition is disposed of.

m.p.

(Gopal Prasad, J)

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