

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.2294 of 2013

Arising Out of PS.Case No. -38 Year- 2012 Thana -PATNA COMPLAINT CASE District- PATNA

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1. Ramesh Chandra Sinha, S/O Late Deo Nandan Singh.
 2. Raj Kumar @ Manoj Kumar, S/O Ramesh Chandra Sinha.
 3. Sunita Devi, W/O Raj Kumar.
 4. Kundan Kumar @ Ganesh Kumar, S/O Ramesh Chandra Sinha.
 5. Kajal Devi, W/O Kundan Kumar.
 6. Bal Kishun Sao, S/O Late Heman Sao.
 7. Rajendra Sao, S/O Late Sugambar Sao.
 8. Mohan Sao, S/O Bal Kishun Sao
- All Resident Of Village- Chandedih, P.S- Punpun, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Praveen Kumar, S/O Late Bidyanand Singh, Resident Of Village- Chandedhi, P.S- Punpun, District- Patna, At Present Residing At Mohalla- Rajiv Nagar Road, No. 15E, P.O- Keshari Nagar, P.S- Digha, District- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Satish Chandra
For the Opposite Party no.1 : Mr. (Dr.)Rabindra Kumar, APP
For the Opposite Party no.2 : Mr.Md.Anisur Rahman

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

10 30-07-2015

Heard the parties.

The petitioners have filed the present application under Section 482 Cr.P.C. with a prayer for quashing the order dated 11.06.2012 passed in Complaint Case No.38(C) of 2012 by the learned Judicial Magistrate-1st Class, Masaurhi, District-Patna, whereby cognizance has been taken for the offences under Sections 420 and 323 of the Indian Penal Code and summons have been issued to the accused petitioners for facing trial.

Learned counsel appearing on behalf of the petitioners submits that, even if the entire prosecution allegations, as disclosed in the complaint petition vide Annexure-1, are



accepted to be true for the sake of argument, though not admitted, in that case also no offence under Section 323 of the Indian Penal Code is made out against the petitioners. He further contends that so far offence under Section 420 of the Indian Penal Code is concerned, the parties are at the loggerheads with each other and a Title (Partition) Suit is pending between the parties. Therefore, according to him, the offence under Section 420 of the Indian Penal Code is also not applicable in the facts of the present case. He next contends that the learned Magistrate, without application of his independent judicial mind to the facts of the case, has taken cognizance of the offences in a mechanical manner and, therefore, the impugned order is not sustainable in the eye of law.

Learned counsel appearing on behalf of the opposite party no.2 has opposed the prayer and has submitted that it is true that there is no allegation in the complaint petition vide Annexure-1 about the commission of crime punishable under Section 323 of the Indian Penal Code, but, in fact, offences under Sections 420, 423 I.P.C. besides others are attracted.

After having heard the parties and on consideration of the materials available on record, this Court is of the opinion that the order impugned cannot be sustained in the eye of law. It appears that the learned Magistrate has not applied his independent judicial mind to the facts of the case while passing the impugned order dated 11.06.2012. Admittedly, no offence under Section 323 of the Indian Penal Code is made out against the accused persons.

In above view of the matter, the impugned order dated 11.06.2012 passed in Complaint Case No.38(C) of 2012 by the learned Judicial Magistrate-1st Class, Masaurhi, District-Patna

is hereby quashed and set aside. However, the learned Magistrate shall be at liberty to pass a fresh order in accordance with law.

The application stands allowed to the extent indicated above.

(Birendra Prasad Verma, J)

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