

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.99 of 2015

Arising Out of PS.Case No. -1291 Year- 2013 Thana -BHAGALPUR COMPLAINT CASE District-
BHAGALPUR

- =====
1. Mithlesh Kumar, son of Sri Shiv Nandan Yadav, Resident of village-Morma, P.S.-Lakhisarai, District-Lakhisarai at present posted on the post of Junior Electrical Engineer, Electric Supply Branch, Sultanganj, District-Bhagalpur.
 2. Sita Ram Rajak, son of Late Ganpati Rajak, resident of village-Barari, P.S.-Barari, District-Bhagalpur, at present posted on the post of Junior Line Man, Electric Supply Branch, Sultanganj, P.S.-Sultanganj, District-Bhagalpur.
 3. Dilip Kumar, son of Bachchu Chaudhary, resident of village-Tajpur, P.S.-Chandradeep, District-Jamui, at present posted on the post of Junior Line Man, Electric Supply Branch, Sultanganj, P.S.-Sultanganj, District-Bhagalpur.
 4. Mahesh Chaudhary, son of Late Singheshwar Chaudhary, resident of village-Nurpur, P.S.-Madhusudanpur, District-Bhagalpur, at present posted on the post of Skilled Labour, Electric Supply Branch, Sultanganj, District-Bhagalpur.

.... Petitioners

Versus

1. The State of Bihar
2. Radha Devi, wife of Late Bilas Bind, resident of village-Dilgaury, P.S.-Sultanganj, District-Bhagalpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Indu Bhushan, Advocate

For the Opposite Party/s : Dr. Mayanand Jha, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 07-10-2015

Heard learned counsel for the petitioners and learned
counsel for the State.



In the present application under Section 482 of the Code of Criminal Procedure (For short 'Cr. P.C.'), the petitioners seek quashing of the order dated 25.03.2014 passed in Complaint Case No. 1291/2013 whereby the petitioners have been summoned to face trial for the offences punishable under Sections 147, 148, 447, 302 and 120-B of the Indian Penal Code.

The husband of the complainant namely, Bilas Bind was made accused in Sultanganj P.S. Case No. 99 of 2013 dated 14.06.2013 registered under Sections 135 of the Electricity Act, 2003. In the said case, petitioner no. 1 Mithilesh Kumar is the informant.

The allegation in the Complaint is that the husband of the complainant was apprehended at 12:00 in the night of 15th June, 2013 by the police. At that time, the petitioners were also accompanying the police party. They badly assaulted him, as a result of which, he sustained internal injuries. He was produced before the jurisdictional Magistrate on 16th June, 2013, who remanded him to judicial custody. While in judicial custody, he complained abdominal pain. He was taken to Mayaganj Hospital, Bhagalpur, and in course of treatment, he died. The complainant has specifically alleged that all the accused persons had mercilessly assaulted her husband when he was apprehended on 15th June, 2013.

The complainant was examined on solemn affirmation and on her behalf four witnesses, namely, Rohit Bind, Mira Devi, Khushbu Devi and Awadhesh Bind were examined in course of inquiry conducted under Section 202 Cr. P.C. The complainant and inquiry witnesses have fully supported the complainant's case in their statements recorded by the jurisdictional Magistrate.

After examining the complainant and the witnesses on behalf of the complainant, the jurisdictional Magistrate summoned the petitioners and one other namely, Janardan Rai, a Sub-Inspector of Police to face trial for the offences under Section 147, 148, 447, 302 and 120-B of the Indian Penal Code.

Learned counsel for the petitioners has submitted that the petitioners are employees of North Bihar Power Holding Corporation. They had raided the house of the complainant on 13th June, 2013, and in course of raid, finding the husband of the complainant to be indulged in committing theft of electricity, petitioner no. 1 Mithilesh Kumar submitted a written report to the Officer-in-Charge of Sultanganj Police Station, Bhagalpur on 13th June, 2013 itself, pursuant to which, the FIR was instituted on 14th June, 2013 and the complainant's husband was apprehended by the police on 15th June, 2013. He has submitted that at the time of arrest of the husband of the complainant, the petitioners were not present

at the place of occurrence and, hence, there can be no presumption that they were also involved in any assault having been made upon him. He has contended that a postmortem examination was also conducted on the person of the deceased. In postmortem examination no mark of any external injury on the body of the deceased could be noticed. The doctor had opined that the death of the husband of the complainant was caused due to rupture of his spleen.

He has further contended that a magisterial inquiry was also conducted in the matter and the Magistrate who conducted the inquiry had opined that the deceased Bilas Bind @ Ram Bilas Bind was arrested from his residence by the police personnel, and was brutally assaulted by them. Thus, he submits that the implication of the petitioners who are all employees of North Bihar Power Holding Corporation in the present case is malicious in nature.

Learned counsel for the State has opposed the prayer made on behalf of the petitioners. He has submitted that there is specific allegation in the complainant that the accused persons together with the police personnel assaulted the deceased Bilas Bind. The complainant has supported the case in her statement made on oath. The other four witnesses examined during inquiry have also supported the allegation that the petitioners had also

participated in assault upon the deceased Bilas Bind. He submits that in view of the overwhelming evidence on record, no error can be found in the order passed by the learned Magistrate.

I have heard learned counsel for the parties and have given my thoughtful consideration to the submissions made on behalf of the parties.

In my view, this is not the stage for considering defence of the petitioners. The complainant claims herself to be an eye witness. The witnesses examined in course of inquiry also claim themselves to be witness to the occurrence. They all have made statements on oath that the petitioners had also participated in assault upon the deceased Bilas Bind.

In view of the materials available on record, if the learned Magistrate has summoned the petitioners to face trial, no error could be found in the impugned order.

Accordingly, the application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

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