

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.32953 of 2012

Arising Out of Complaint Case No. -2284 Year- 2010, District- ARRARIA

- =====
1. Nirmala Devi, W/o Sri Tarachand Yadav
 2. Tarachand Das Yadav @ Tarachand Yadav, S/o Late Kishori Yadav
 3. Mukesh Kumar Yadav, S/o Tara Chand Yadav, resident of village – Mahathawa, P.S. – Bhargama, District - Araria

.... Petitioner/s

Versus

1. State of Bihar
2. Ramanand Das, S/o Late Shawan Das, Resident of Village – Mahathawa Bazar, P.S. – Bhargama, District - Araria

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 27-03-2015

Heard learned counsel for the parties.

Valid service of notice has been effected upon

O.P. No. 2. However, he has chosen not to appear.

Application under section 482 of Code of Criminal Procedure has been filed by these petitioners for quashing the order, dated 20th of July, 2012, passed by the learned court of Ad-hoc Additional Sessions Judge-1, Araria in Criminal Revision No. 19 / 132 of 2011. By virtue of this order, the criminal revision, filed by these petitioners, came to be rejected.

The petitioners had moved the revision

application, seeking quashing of the order of cognizance taken against them under section 406 I.P.C.

The facts are that on 25.06.2010, the complainant was supposed to have received summon from the member of the Gram Raksha Dal of Gram Panchayat, Sirisiya, Hanumanganj. When he demanded a copy of the complaint case and details thereof, he was promised by the accused persons, especially accused no. 2 that it will be provided on the date of the appearance, which has been fixed in the said summon i.e. 03.07.2010.

It is alleged that on the date of the occurrence the complainant went to Gram Kachahari along with his wife and other witnesses and demanded the case number in presence of all the accused persons, but instead of providing details they started abusing the complainant. When documents were shown with regard to the land in question to accused no. 1, 2 and 3, they commented that the document was a forged one and they ordered one of the accused persons, namely, Manoj Kumar Sah to enter into the house after breaking the lock of the house, which was resisted. This formed the basis for institution of the complaint case, on which cognizance was taken under section 406 I.P.C.

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Submission of the counsel appearing on behalf of the petitioners is that the ingredients of section 406 of the I.P.C. are not made out. Section 406 provides for punishment of criminal breach of trust. Criminal breach of trust has been defined in section 405 of the I.P.C. On a plain reading of allegation made against the petitioners, no case can be made out at least under section 406 I.P.C., for which cognizance has been taken by the Chief Judicial Magistrate. It was in this background that the revision application was moved, which came to be rejected on the ground that since prima facie a case was made out, cognizance was rightly taken.

After hearing learned counsel for the petitioners as well as learned APP, the Court comes to a considered opinion that initially complaint was registered under section 420 of the I.P.C., but cognizance was taken under section 406 of the I.P.C.

The reading of the allegation in no way reveal the ingredients of sections 405 or 406 I.P.C. for the alleged conduct against these petitioners.

In view of the same, the order impugned passed by the Ad-hoc Additional Sessions Judge-1, Araria in Cr. Revision No. 19/132 of 2011, dated 20th of

July, 2012 is set aside.

Matter is remanded to the said authority for passing an order afresh in view of what has been indicated by the Court in the earlier part of the Order.

Quashing application is allowed.

(Ajay Kumar Tripathi, J.)

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