

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.17745 of 2015

Arising Out of PS.Case No. -6 Year- 2013 Thana -LALGANJ District- VAISHALI(HAJIPUR)

1. Santosh Kumar Son of Rajeshwar prasad  
2. Rajeshwar prasad son of late Vishwanath Prasad Both Resident of Premganj, P.s Lalaganj, District Vaishali.

.... .... Petitioner/s

Versus

1. The State of Bihar  
2. Md. Yusuf son of Yakub Mian Resident of Mohalla- Repura, Ward No. 18, P.s Lalaganj, District Vaishali.

.... .... Opposite Party/s

Appearance :

- For the Petitioner/s : Mr. Surendra Kishore Thakur, Advocate.  
For the Opposite Party/s : Mr. Pankaj Kumar, A  
Mr. Smatosh Kumar, Advocate  
For the State : Mr.Upendra Kumar (App)

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR  
TRIVEDI  
ORAL ORDER

3 21-07-2015 Heard learned counsel for the petitioners, learned counsel for the Opposite party No. 2 as well as learned Additional P.P.

Petitioners have challenged an order dated 13.02.2015 passed by the learned lower court whereby and whereunder petitioners have been summoned to face trial for an offence punishable under section 379 of the I.P.C. in connection with the complaint case No. 1523/2013/ Tr. No. 4864/2014 (Md. Yusuf Vs.Santosh Kumar & others.)

Earlier an F.I.R. was registered at the behest of Md. Yusuf, Opposite party No. 2 on an allegation that in between night of 5<sup>th</sup> and 6<sup>th</sup> January, 2013, there was theft in his shop and during course thereof, unknown thieves taken away the articles, so detailed therein. However, he had suspected against the

petitioners, who are none else, but his land lord on account of animosity as well as continued litigation since before.

The aforesaid case bearing Lalganj P.S. Case No. 6 of 2013 concluded by way of filing of final form after investigation. However, after acceptance of the same, the case proceeded on the basis of the protest petition having at the end of Opposite Party No. 2. After examination of Opposite Party No. 2 on S.A., the matter proceeded under Section 202 of the Cr. P.C. whereunder four witnesses were examined and subsequently thereof, by the order impugned, petitioners have been summoned to face trial, the subject matter of instant petition.

It has been submitted on behalf of the petitioners that neither there happens to be direct evidence nor circumstantial. Furthermore, as is evident from the Complaint Petition itself, there happens to be litigation in between since before the occurrence, on account thereof the instant case has purposely been filed. Then it has been submitted that neither complainant nor any of the witnesses during course of statement, had seen the petitioners committing the offence. However, as there happens to be an allegation at the end of Opposite Party No. 2 that on 05.01.2013, there was some sort of altercation with threatening of dire consequences on account thereof put suspicion against them. Accordingly petitioners have been summoned which is not at all justifiable in the eye of law.

At the other end, learned counsel representing

Opposite Party No. 2 has supported the order impugned and submits that there happens to be circumstantial evidence against the petitioners whereupon, the order impugned has been passed.

It has further been submitted that on 05.01.2013, petitioners have threatened as well as directed to face dire consequence and then thereafter, an occurrence had taken place. The activities of the petitioner in the aforesaid event, is found coexistent with the occurrence and on account thereof, presumption will go against them.

Learned Additional P.P. endorsed the same. Admittedly, from perusal of statement of the witnesses (Anexure-4 series) as well as the protest cum complaint petition (Annexure-3) it divulges presence of strain relationship, status of both the parties on litigating terms but so far Criminal prosecution is concerned, there should be some sort of evidence, which could justify summoning of the petitioner stamping as an accused which happens to be completely absent. Suspicion, however strong would not justify unless there happens to be cogent material to interconnect.

That being so, the order impugned is set aside. Consequent thereupon, the petition is allowed.

**(Aditya Kumar Trivedi, J)**

Sudha/-

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