

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.22841 of 2016

Arising Out of PS.Case No. -1588 Year- 2015 Thana -BHAGALPUR COMPLAINT CASE District-
BHAGALPUR

- =====
1. MD. YASIN KHAN SON OF LATE MD. SAJID KHAN
 2. MD. QUMRUZZAMAN KHAN @ QUMRUZZAMAN KHAN
 3. MD. NAJMUZZAMAN KHAN @ NAJMUZZAMAN
 4. MD. TANWEERUZZAMAN @ MD. TANWIR @ TANNU
PETITIONER NOS. 2 TO 4 SONS OF MD. YASIN KHAN
 5. MD. AYUB SON OF LATE MD. FIDA HUSSAIN
 6. MD. KASIF QAMAR @ KASIF KHAN SON OF MD.
QUMRUZZAMAN KHAN
 7. MD. ASIF RAZA @ ASIF KHAN SON OF ISRAIL KHAN
ALL RESIDENT OF VILLAGE- SAMASTIPUR, POLICE STATION-
SHAHKUND, DISTRICT- BHAGALPUR.
 8. REZVI KHAN SON OF RAZZAQUE KHAN RESIDENT OF
VILLAGE- JUAKHAR, POLICE STATION- SHAHKUND,
DISTRICT- BHAGALPUR.

.... PETITIONER/S

VERSUS

1. THE STATE OF BIHAR.
2. NADRA BEGUM WIFE OF SHAHJAD ALAM RESIDENT OF
VILLAGE- SAMASTIPUR, POLICE STATION- SHAHKUND,
DISTRICT- BHAGALPUR.

.... OPPOSITE PARTY/S

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Appearance:

For the Petitioner/s : Mr. Md. Najmul Hodda, Adv.
For the Opposite Party/s : Mr. Dr. Kr.Uday Pratap, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 23-09-2016 Heard learned counsel for the petitioners as well as

learned counsel for the opposite party no.2 along with learned

Additional Public Prosecutor.

Petitioners are aggrieved by an order dated
18.03.2016 passed by Sri A.S. Prasad, Judicial Magistrate, 1st
Class, Bhagalpur in connection with Complaint Case No.C-
1588/2015 whereby and whereunder the learned lower court
had summoned the petitioners to face trial for an offence
punishable under Sections 323,341,379,384/34 of the IPC.

Simple contention on behalf of the petitioner is



that petitioner Md.Yasin Khan had instituted case bearing Shahkund P.S. Case No.125/2015 on the same day i.e. on 14.07.2015 itself against the prosecution party. After coming to know about the same, the prosecution party after two days filed instant complaint petition levelling false and frivolous allegation. It has also been submitted that from the injury report it is evident that apart from sustaining injuries at the hands of the prosecution party, petitioners were also being treated by the doctor at the relevant time and on account thereof, it could be conclusively held that instant prosecution happens to be malicious prosecution whereupon, the order of cognizance is fit to be quashed.

The learned Additional Public Prosecutor along with learned counsel for the opposite party no.2 have opposed the prayer and submitted that after tracing out prima facie case on an inquiry having been conducted under Section 202 of the Cr.P.C., the learned Magistrate took cognizance of an offence and further identified the petitioners to be responsible for the same whereupon summoned them. So, at the present moment the order impugned needs no interference.

Version and counter version for an occurrence is found permissible in the eye of law and the aforesaid question has been decided by the Hon'ble Apex Court times without number. Furthermore, there happens to be specific assertion in the complaint petition that on the same day, the complainant had approached the police officials and on being refused at their end, a written complaint was sent to the Superintendent

of Police through registered post. Therefore, delay is found duly explained. Now coming to the issue which has been raised at the end of the petitioners that instant prosecution happens to be malicious one could be seen in the background of version and counter version for an occurrence. After having institution of the FIR occurrence having been committed on alleged date that means to say, 14.07.2015 is found there and for that there happens to be version and counter version, which either of two is true is a matter of trial. At the present moment while adjudicating upon propriety of the order of the cognizance more particularly in the background of case and counter case, the same should be allowed to go un-hewn.

That being so, instant petition sans merit and is accordingly, rejected.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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