

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.3675 of 2016

Arising Out of PS.Case No. -19 Year- 2012 Thana -PARASI District- JEHANABAD

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Shyamdil Singh S/o Late Viden Singh resident of Village Bahadurpur, P.S.
Parasi, District- Arwal.

.... Petitioner

Versus

1. The State of Bihar
2. Ramdil Singh S/o Late Viden Singh resident of Village- Bahadurpur, P.S.
Parasi, District- Arwal.

.... Opposite Parties.

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Appearance :

For the Petitioner : Mr. Dewendra Narayan Singh
For the State : Mr. Rita Verma, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR
TRIVEDI
ORAL ORDER

3 22-09-2016 Heard learned counsel for the petitioner as well as learned
Additional P.P.

2. The petitioners along with others who were not sent up for trial by the Investigating Officer after concluding the investigation became aggrieved against the order dated 02.07.2014 passed by the learned Chief Judicial Magistrate, Arwal in connection with Parasi P.S. Case No. 19 of 2012 whereby and whereunder the learned lower court differing from the same, took cognizance of an offence punishable under Section 380 of I.P.C. and summoned the petitioner and others to face trial.

2. At an earlier occasion on the request of the learned counsel for the petitioner, case diary was called for and the same

is available on the record.

3. Opposite party no. 2/informant had filed written report disclosing therein that after hearing the rattling sound in the night of 13.04.2012 he awoken and found Shyamdil Singh (petitioner) his son Manish Kumar, his wife Meena Devi, Binay Singh, Raghubar Kumar, Geeta Devi, Phulendra Singh, Naim Mian, and Hasina Khatoon, out of whom Shyamdil singh and Binay Singh were carrying one box each. He further narrated that he tried to catch hold of them, but during course thereof Manish shot fire however, having miraculous escape. Further disclosed that Rs. 10,000/-, golden ornaments and chain etc. were kept in two boxes.

4. After going through the case diary, it is evident that the informant in his further statement in paragraph 2, the statement of the son of the informant paragraph 3, the statement of Vaijnath Singh in paragraph 7 and his son in paragraph 8 have supported the prosecution case in toto while Shambhu Singh in paragraph 14 have supported the prosecution case, but did not name any of the accused while Gajendra Kumar in paragraph 15 had supported the prosecution case and further disclosed that he came to know from the family members of the informant that occurrence was committed by the accused persons. Paragraph 16 is the statement of Pankaj Singh who had not supported the case

of the prosecution and stated that both the brothers are on litigating terms. Shyam Singh in paragraph 17 had stated similar to the statement of Pankaj Singh in paragraph 16. Nirmal Yadav in paragraph 18 and statement in paragraph 25 of Gobardhan Singh have also stated like so.

5. Learned counsel for the petitioner has submitted that probability of malicious prosecution is there in the background having both the brothers had loggerhead. It is also submitted that land dispute is going amongst the parties and for that annexure 2 has been filed. It has also been submitted that on earlier occasion the petitioner, Shyamdil Singh had registered a case bearing Parasi P.S. Case No. 2 of 2011 against the informant and others vide annexure-3. Further it has been submitted that after convening a Panchayati relating to land under dispute, as the prosecution party had failed to appear in court, subsequently, a proceeding under Section 147 of Cr.P.C. has been cropped up (Annexure-5).

6. On the stretch of the aforesaid statement, it has been submitted that court should have accepted finding of the I.O. that on account of strain relationship, instant malicious prosecution has been launched. Consequent thereupon in terms of Section 482 of Cr.P.C. order of cognizance is liable to be quashed. During course of cognizance, the Court has to see only a prima facie case.

During consideration of malicious prosecution, the Court has to form its opinion, but considering annexure-3, the aforesaid plea goes out of consideration. Genuineness of version is the matter of trial.

7. That being so, the order impugned needs no interference. Consequent thereupon, the instant petition is dismissed.

(Aditya Kumar Trivedi, J)

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