

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.31417 of 2013

Arising Out of PS.Case No. -257 Year- 2012 Thana -SHEKHPURA District- SEKHPURA

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1. Veerchand Patel Son Of Late Ramjee Prasad @ Maulvi Mahto, Resident Of Village- Karkain, P.S.- Ghoswari, District – Patna, At Present Residing At Mohalla- Bazidpur, Ward No. 4, Barh, P.S.- Barh, District - Patna

2. Jitendra Prasad @ Jitendra Kumar S/o Veerchand Patel @ Umesh Mahto Resident Of Village- Karkain, P.S.- Ghoswari, District – Patna, At Present Residing At Mohalla- Bazidpur, Ward No. 4, Barh, P.S.- Barh, District – Patna

.... Petitioners

Versus

1. The State Of Bihar

2. Dharmshila Devi Wife of Late Kamla Vishwakarma, Resident Of Mohalla - Patel Chowk, Hasanganj, P.S.- Sheikhprua, District - Sheikhpura

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. D.K. Tiwari, Advocate
Ms. Shanti Kumari, Advocate

For the Opposite Parties : Mr. Shyam Kumar Singh (APP)

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 03-08-2016

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

2. By way of the present application preferred under Section 482 of the Code of the Criminal Procedure, (for short ‘CrPC’) the petitioners seek quashing of the order dated 08.05.2013 passed by the learned Sub-Divisional JudicPial Magistrate, Sheikhpura in Complaint Case No. 62(C) of 2013, whereby he took cognizance of the offences punishable under Sections 147,149 and 304 Part-1 of the Indian Penal Code.



3. It is submitted by the learned counsel for the petitioners that the protest petition, on the basis of which the “complaint” has been lodged, was not maintainable in law. The protest petition does not contain any allegation against the investigating agency which had earlier investigated the police case in respect of the same offence and submitted a final report. He has further submitted that the allegations made in the “complaint” do not attract the ingredients of the offences alleged. He has submitted that a protest petition filed in a police case could not have been treated as complaint, as it was filed during the pendency of investigation of the police case.

4. Learned counsel for the State has opposed the prayer made by the petitioners.

5. I have heard respective counsel for the parties and perused the record.

6. It is true that initially a police case was registered under Section 302/34 of the Indian Penal Code and on completion of investigation, final report was submitted, which was accepted by the Court. However, during pendency of the police investigation, a protest petition was filed by the complainant alleging the illegalities and irregularities committed by the police in investigation of the case. In my opinion, if the court has directed for institution of the protest

petition as complaint while accepting the police report under Section 173(2) of the CrPc, the order cannot be challenged on this ground alone.

7. The protest petition is in the nature of “complaint”. It has specifically been stated in the “complaint” that the petitioners along with two others came to the house of the complainant and forcibly took her husband at the roof and accused Sanjay Mahto pushed him down causing serious injury resulting into his subsequent death.

8. It would be evident from the impugned order passed by the learned Sub-Divisional Judicial Magistrate, Sheikhpura that the complainant has supported the allegations made in the “complaint” in her statement made on oath and apart from the complainant, three witnesses, namely, Sangeeta Devi, Mahtavi Devi and Pinky Kumari have also supported the allegation made in the “complaint”.

9. Considering the aforesaid allegations made in the “complaint”, if the Sub-Divisional Judicial Magistrate, Sheikhpura has summoned the petitioners to face trial for the aforesaid offences, vide impugned order dated 08.05.2013, no fault can be found with such order.

10. Before parting with this order, I must record that so

far as the contention of the petitioners that protest petition couldn't have been treated as "complaint" is thoroughly misconceived. The word "complaint" has been defined under Section 2(d) of the CrPC, which reads as under:

"2. (d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report."

11. From a bare reading of the provision prescribed under Section 2(d) of the CrPC, it would be crystal clear that no format is prescribed for lodging a complaint. Any allegation, which is made either orally or in writing to a Magistrate, with a view to his taking action under the CrPC, alleging that some person, whether known or unknown, has committed an offence, can be treated as complaint except a report submitted by the police. The protest petition, which has been treated as complaint by the Magistrate while accepting the police report, contains name of the complainant, name of the accused persons, name of the witnesses, date, time and place of occurrence, the nature of the alleged offences and the substance of accusation made against the petitioners. Thus, it has all the necessary ingredient of a legal "complaint".

12. For the reasons stated above, the application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

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