

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.25709 of 2013

Arising Out of PS.Case No. -10 Year- 2010 Thana -PARASI District- JEHANABAD

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1. Collector Singh S/O Late Indradeo Singh Resident Of Village-
Bahadurpur, P.S.- Parasi, District- Arwal
 2. Nagendra Singh S/O Late Indradeo Singh Resident Of Village-
Bahadurpur, P.S.- Parasi, District- Arwal
 3. Ravindra Singh S/O Late Indradeo Singh Resident Of Village-
Bahadurpur, P.S.- Parasi, District- Arwal
 4. Baiju Singh S/O Sri Ram Kailash Singh Resident Of Village-
Bahadurpur, P.S.- Parasi, District- Arwal

.... Petitioner/s

Versus

The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sunil Srivastava, Advocate.

For the Opposite Party/s : Mr. Mayanand Jha (App)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR
TRIVEDI
ORAL ORDER

2 16-05-2016 Heard learned counsel for the petitioners as well as
learned A.P.P.

Vide order dated 24.04.2013 prayer of the
petitioners has been rejected by the learned lower court presided
over by Sri Sanjay Singh, Judicial Magistrate 1st Class, Jehanabad,
in Parasi P.S. Case No.10 of 2010 to discharge the petitioners
under Section 239 Cr.P.C., hence instant petition.

Dularchand Das, C.I., filed written report disclosing
therein that he found two persons engaged in cutting two mango
trees standing over Survey Plot No.754 corresponding to Khata
No.115 who were interrogated and from them, he came to know
that on an order of Collector Singh, Nagendra Singh, Ravindra

Singh and Baiju Singh, they were engaged. It has also been disclosed in the aforesaid written report that at an earlier occasion, they were forbidden. It has further been disclosed that during course of enquiry he came to know that aforesaid four persons were engaged in cutting two mango trees.

It has been submitted on behalf of the petitioners that Survey plot no.754 has been recorded as Gairmajarua under the possession of one Sheo Narayan Singh along with others having no concern with the petitioners and further more, discloses presence of Mahua tree instead of mango tree and to substantiate the same, photostat copy of C.C. of Khatian has been filed. Apart from this, It has also been submitted that no case against the accused persons is made out in the background of the fact that the written report as well as materials having been collected during course of investigation are so perfunctory and insufficient that it would not attract Section 379 I.P.C. as well as, 411 I.P.C. in the background of the fact that apart from having deficiency at the end of the informant to disclose the names of the persons who were engaged in cutting tree, he had not stated that tree was cut away. Further more, the P.O. did not corroborate prosecution and in the aforesaid background, learned lower court should have considered that no offence would attract with regard to cutting of mango tree from survey plot no.754, as no mango tree was standing thereon.

Learned A.P.P. opposed the prayer of the petitioners.

In order to attract Section 239 of Cr.P.C., the Magistrate has to see the materials having been forwarded before him which, during course of investigation have been collected. Therefore, the learned lower court should have considered at least from the place of occurrence that really mango tree was standing over certain plot No.754 and further, it was cut away. In the background of remark column of revisional survey wherein presence as well as in possession of Sheo Narayan Singh has properly been identified coupled with presence of Mahua tree, would really attract prosecution for cutting Mango tree which the learned lower court could rely as observed by the Hon'ble Apex Court in (2008) 14 SCC page 1 as well as 2011 (3) BLJR Page 100 (SC).

That being so, impugned order is set aside.

The instant petition is allowed.

Matter is remitted back to the learned lower court to proceed afresh in the background of the aforesaid observation.

(Aditya Kumar Trivedi, J)

AnilKrSinha/-

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