

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.30664 of 2016

Arising Out of PS.Case No. -3 Year- 2016 Thana -MUZFFARPUR COMPLAINT CASE District- MUZAFFARPUR

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1. Chandan Kumar, s/o Umesh Prasad Thakur
 2. Abhishek Kumar, s/o Umesh Prasad Thakur
 3. Monu Kumar (Sonu), s/o Late Ravindra Kushwaha
 4. Prakash Kumar (Pappy), s/o Amil Rai
 5. Amod Kumar, s/o Umesh Prasad Thakur

Petitioners 1, 2 and 5 are r/o vill+PO+PS-Piyar, Dist-Muzaffarpur.
Petitioner no. 3 r/o Megh Ratwara, PS-Piyar, Dist- Muzaffarpur and
petitioner no. 4 r/o v ill-Rampurdayal, PS-Piyar, Dist- Muzaffarpur.

.... Petitioners

Versus

1. State of Bihar
2. Md. Manzoor Sah, s/o Md. Rahim Sah, r/o vill-Bangra, PO+PS-Piyar, Dist-Muzaffarpur

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Nachiketa Jha, Advocate

For the Opposite Parties : Mr. Sri Jharkhandi Upadhyay (APP)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 05-09-2016 Heard learned counsel for the petitioner as well as
learned Addl.P.P.

Learned counsel for the petitioner has submitted
that the prosecution parties are aggressor. The land in dispute
happens to be under their possession with valid title and on
account of illegal activities having at the end of the prosecution
parties, on *fardbeyan* of petitioner Dr. Chandan Kumar, Piyar P.S.
case no. 120/2015 has been filed. Subsequently thereof, after so
many days, instant case has been filed. Therefore, it happens to be
as submitted at the end of the petitioner, being a malicious

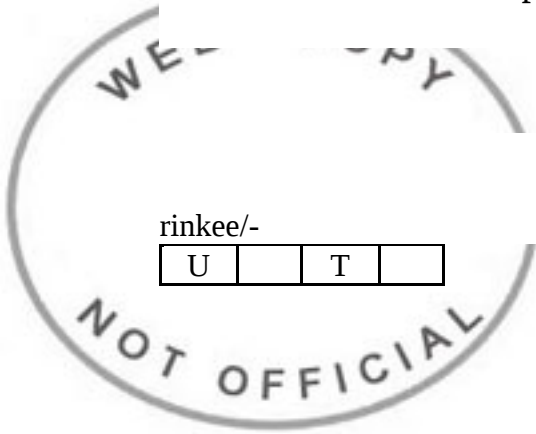
prosecution, hence, the order impugned dated 15.03.2016 passed by Sri Samrendra Gandhi, J.M. 1st class, Muzaffarpur in Complaint case no. 03/2016 is fit to be set aside.

Learned Addl.P.P. has refuted the submission and submitted that delay is itself explained in the background of the fact that apart from having discovered in the complaint petition that S.P., D.M. are informed on 26.12.2015, during the intervening period, Civil Court remained closed on account of X-mas holiday. Furthermore, it has been submitted that for the same occurrence, version and counter version is permissible. Authenticity is to be judged at the fag end of the trial.

As held in T.T. Antony case reported in (2001) 6 SCC 181, a case and counter case is permissible with a caution that the trial be conducted by the same Court for proper appreciation of evidence who should deliver the judgment on the same day one by another. However, it is made clear that the material of one case will not be considered in another case. That being so, the learned Sessions Judge, Muzaffarpur is directed to transfer both the cases before the same Magistrate and further, will keep vigil, so that, the same remain pending before the same Magistrate so that appreciation of evidence be properly done during course of conduction of trial.

With the aforesaid observation, the instant petition

is disposed of.



(Aditya Kumar Trivedi, J.)