

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.42972 of 2010

Arising Out of PS.Case No. -0 Year- null Thana -null District- AURANGABAD

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1. Azim Khan son of Salim Khan, resident of village- Bihata, P.S.- Rafiganj,
District- Aurangabad
 2. Rahman Rakab son of Azim Khan @ Rahman Khan, resident of village- Bihata,
P.S.-Rafiganj, District- Aurangabad
 3. Imran Khan son of Md. Azim Khan @ Md. Rahman Khan, resident of village –
Bihata, P.S. - Rafiganj, District - Aurangabad
 4. Murshid Khan son of Masud Khan @ Murshad Khan, resident of village-
Ashansol Bardman, West Bengal, District - West Bengal
 5. Samad Khan son of Masud Khan, resident of village- Ashansol Bardman, West
Bengal, District- West Bengal
- Petitioner/s

Versus

1. The State of Bihar
 2. Aslam Khan son of Late Rahim Khan, resident of village- Bihata, P.S.-Rafiganj,
District- Aurangabad
- Opposite Party/s
- =====

Appearance :

For the Petitioner/s : Mr. Gangadhar Yadav, Advocate
: Mrs. Leelawati Kumari, Advocate
For the Opposite Party No.2 : None
For the State : Mr. Jhankhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 29-07-2016

By way of present application preferred under Section 482 of the Code of Criminal Procedure (for short 'CrPC'), the petitioners have challenged the order dated 28.9.2010 passed by learned Sessions Judge, Aurangabad in Cr. Revision No. 25 of 2010 whereby the revision application against the summoning order dated 9.2.2010 passed by the learned Judicial Magistrate, 1st Class, Aurangabad in Complaint Case No.830 of 2009 has been dismissed.

2. According to the case of the complainant, the accused petitioners were insisting the complainant opposite party no.2 to withdraw the earlier criminal case filed by the sister of the complainant for the offences punishable under Section 370/511 of the

IPC and on refusal they entered into the house of the informant, abused him and took away several household articles including cash.

3. It is submitted by the learned counsel for the petitioners that initially an FIR was instituted by the complainant for the alleged offence, but on completion of investigation the police submitted final report holding the accusation to be false and the Magistrate also accepted the same. However, since a complaint was already filed in the court by the complainant alleging that the police are in collusion with the informant of the case, while accepting the final report, the jurisdictional Magistrate directed to register a separate complaint case and on the basis of the said complaint the petitioners have been summoned vide impugned order. He has submitted that the allegations made in the complaint are false and the enquiry conducted by the jurisdictional Magistrate was perfunctuary.

4. Despite service of valid notice, the complainant has neither appeared in person nor is being represented through advocate.

5. Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor has appeared on behalf of the State. He has submitted that there is no illegality in the impugned order and the instant application under Section 482 of the CrPC is, as a matter of fact, second revision, which is barred in law.

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

7. I find that the allegations made in the complaint have duly been supported by the complainant while being examined on solemn affirmation under Section 200 of the CrPC. The three enquiry witnesses examined on behalf of the complainant have also supported the allegations made in the complaint in course of enquiry conducted under Section 202 of the CrPC. In view of the materials collected during enquiry, if the jurisdictional Magistrate has found a prima facie case to be made out under Sections 147, 148, 380 and 504 of the IPC and summoned the petitioners to face trial, no illegality can be found with the impugned order. The order dated 9.2.2010 passed by the Magistrate is a reasoned order and the revisional court while dismissing the revision application has appreciated the facts and law in its correct perspective. Even otherwise, learned counsel for the State has rightly pointed out that the instant application under Section 482 of the CrPC is, as a matter of fact, second revision, which is barred under Section 397(3) of the CrPC.

8. In view of the discussions made hereinabove, I do not find any merit in the present application. Accordingly, it is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	
Transmission Date	