

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.24799 of 2013

Arising Out of PS.Case No. -1631 Year- 2008 Thana -BHOJPUR COMPLAINT CASE District-
BHOJPUR

- =====
1. Abhilakh Singh son of Late Charitar Mahto, resident of Village-Dhokarhaa, PS-Imadpur, Distt-Bhojpur.
 2. Jaggu Kahar son of Late Ram Janam Kahar, resident of Village-Jagjiwanpur, PS-Imadpur, Distt-Bhojpur.
 3. Jagya Nand Pandey, son of Late Kapildeo Pandey, resident of Village-Jagjiwanpur, PS-Imadpur, Distt-Bhojpur.

.... Petitioner/s

Versus

1. State of Bihar
2. Bijendra Sah, son of Late Badur Sah, ; resident of Village-Jagjiwanpur, PS-Imadpur, Distt-Bhojpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bhavesh Kumar, -Advocate

For the Opposite Party/s : Mr. D. Mehta (APP)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 12-05-2016 Heard learned counsel for the petitioners as well as
learned APP.

Petitioner is aggrieved by an order dated 20.03.2013 passed by Sri A.K. Singh, Judicial Magistrate-1st Class, Ara in Complaint Case No. 1631(C) of 2008 whereby and whereunder the learned lower court had rejected the prayer made on behalf of petitioners and further formed an opinion that a case under Sections 420, 120B IPC is made out whereunder charges have to be framed.

2. Learned counsel for the petitioner submits that from complaint petition, Annexure-3, it is evident that no case

under Sections 420 and 120B IPC is substantiated and on account thereof, the order be set aside.

3. Learned APP opposed the prayer.

4. No C.C. of deposition of the witnesses having been adduced on behalf of complainant, if any, during course of the proceeding under Section 244 Cr.P.C. has been produced and on account thereof, it is difficult to ascertain whether the witnesses who have been examined before the charge in terms of Section 244 Cr.P.C. substantiated the same or not.

5. Consideration of the complaint petition at the present moment, as submitted on behalf of petitioner is permissible or not, is itself found duly explained after going through Section 245 Cr.P.C. For better appreciation the same is quoted hereinbelow:-

245. When accused shall be discharged -

(1) If, upon taking all the evidence referred to in section 244 the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

6. The complaint petition has got no role to play at

the present moment in terms of Section 245 Cr.P.C. Consequent thereupon, referring the same at the end of learned counsel for the petitioner is found beyond the scope of consideration in terms of Section 245 Cr.P.C. Furthermore, for want of evidence of those witnesses having been examined before charge under the guise of Section 244 Cr.P.C., it looks difficult to adjudicate upon the order impugned whether a case under Section 420, 120B IPC is justifiable or not.

7. On account of lapses on the part of the petitioners, the instant petition is found meritless and, accordingly, the same is rejected.

(Aditya Kumar Trivedi, J)

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