

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.26704 of 2014

Arising Out of PS.Case No. -103 Year- 2012 Thana -DULHIN BAZAR District- PATNA

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1. HEERA VERMA SON OF LATE CHANDER MAHTO
 2. NAWAL BHAGAT SON OF TEEJU BHAGAT
 3. VINAY BHAGAT SON OF TEEJU BHAGAT
 4. RAGHUNATH THATHERA SON OF LATE BASUDEO THATHERA
 5. DINESH YADAV @ DINESH BHAGAT SON OF CHHOTU YADAV.
ALL RESIDENT OF VILLAGE AIN KHAN P.S. DULHIN BAZAR, DISTRICT-PATNA.
 6. MAHENDRA YADAV SON OF LATE CHUNI YADAV
 7. MADHESHWAR YADAV SON OF LATE CHUNI YADAV.
BOTH RESIDENT OF VILLAGE AZAD NAGAR P.S. DULHIN BAZAR, DISTRICT-PATNA.
 8. VISHWANATH YADAV SON OF MAHENDRA YADAV
RESIDENT OF VILLAGE KATAIYAPAR, P.S. DULHIN BAZAR, DISTRICT-PATNA.

.... PETITIONER/S

VERSUS

1. THE STATE OF BIHAR
2. SURENDRA YADAV SON OF LATE RAMCHANDRA YADAV
RESIDENT OF VILLAGE AIN KHAN (KADIRGANJ) P.S. DULHIN BAZAR DISTRICT PATNA.

.... OPPOSITE PARTY/S

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Appearance:

For the Petitioner/s : Mr. Vijay Kumar Singh, Adv.
For the Opposite Party/s : Mr. Binod Kumar No.2, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 24-08-2016 Heard learned counsel for the petitioners as well as

learned Additional Public Prosecutor.

In spite of notice, Opposite Party No.2 has not

appeared.

Petitioners, who are an accused of Dulhin Bazar P.S.

Case No.103 of 2012 are aggrieved by an order dated 21.03.2014

passed by Shri Rabi Shankar, Judicial Magistrate, 1st Class,

Danapur whereby and whereunder prayer of discharge having been made on behalf of petitioners under Section 239 of the Cr.P.C. has been rejected.

It has been submitted on behalf of petitioners that with regard to land under dispute petitioners have filed Title Suit No.313 of 2011. Under the garb of land dispute, giving a civil cause prohibits proceeding of criminal prosecution. It has also been submitted that conduct of the prosecution happens to be malafide which is itself apparent as on the same date the land owner got two cases instituted against the petitioners by his henchmen. So submitted that instead of rejecting the prayer of the petitioner under Section 239 of the Cr.P.C., the learned lower court should have accepted the prayer made on behalf of petitioners and would have discharged the petitioners.

The learned Additional Public Prosecutor opposed the prayer.

Malicious prosecution has been deprecated and that happens to be reason behind that right from initial stage to Bhajan Lal case, malicious prosecution has been allowed to be nibbed at the bud stage itself. Therefore, whenever malicious prosecution has been sought for to be quashed by way of quashing the FIR or the order of cognizance, the mode of consideration is found expanded whereunder the aggrieved has got every opportunity for



redressal of his grievances. At the present stage, when the trial proceeded ahead and is fixed for framing of charge, then in that event, the court has to perceive the materials having on the record in terms of Section 239 as well as 240 of the Cr.P.C. For the purpose of discharge, the magistrate has to see the materials and further to infer whether those materials speak with regard to its insufficiency and on the basis thereof, the charge appears to be groundless that means to say the allegation whatever been alleged is not found duly surfaced by an ancillary material having on record under Section 173 Cr.P.C. otherwise the trial court will proceed to frame charge. So, at the relevant stage of charge, the malicious prosecution goes out of consideration. That being so, the submission having been made on behalf of petitioner that it happens to be a civil dispute, for the present stage is found out of acclamation.

In the aforesaid background now the facts of the case is to be taken note of wherein, it has alleged by the informant that on the alleged date and time of occurrence while he was engaged in getting the land ploughed, all the accused persons variously armed came at that place, forbidden him to plough and then thereafter assault. During course thereof, rupees ten thousand was snatched away. Furthermore, it is also evident that accused persons threatened him that in case rupees one lac is not provided

as rangdari they will not allow harvesting. It has also been disclosed that accused persons illegally got mutation in their name after taking the Halka Karamchari in their collusion.

From perusal of the order impugned, it is evident that learned lower court had found sufficient material, to proceed against the accused/petitioners and so, did not require interference.

Instant petition is found devoid of merit and is accordingly rejected.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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