

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.511 of 2015

Arising Out of PS.Case No. -527 Year- 2007 Thana -KHAGARIA COMPALINT CASE District- KHAGARIA

1. Dashmi Ram Son of Late Ram Lal Ram Resident of village - Bhadaini, P.O. Bheria, P.S. Durgawati, District - Kaimur

.... Petitioner/s

Versus

1. The State of Bihar

2. Mrigendra Nath Mishra S/o Late Yogendra Nath Mishra R/o Shirmiya, P.S. Gogari, District - Khagaria, Bihar

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Kuber Pathak, Adv.

For the State : Mr. Indra Kumar Singh, APP

For Opposite Party No.2 : Mr. Rajeeva Roy, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 28-03-2016

Heard Mr. Kuber Pathak, learned counsel for the petitioner and Mr. Rajeeva Roy, learned counsel for the Opposite Party No.2.

2. By way of the present application preferred under Section 482 of the Code of Criminal Procedure, the petitioner seeks quashing of the order dated 17.04.2009 passed by the learned Sub Divisional Judicial Magistrate, Khagaria in Complaint Case No. 527C of 2007, whereby and whereunder he has summoned the petitioner and nine others to face trial for the offences punishable under Sections 147, 323, 341 and 342 of the Indian Penal Code.

3. It has been contended by the learned counsel for the

petitioner Dashmi Ram that even if the entire allegations made in the complaint are taken to be true, the ingredients of the offences punishable under Sections 147, 323, 341 and 342 of the Indian Penal Code would not be attracted as against the petitioner.

4. On the other hand, learned counsel for the Complainant-Opposite Party No.2 has submitted that though there are certain shortcomings in the complaint petition, it cannot be ruled out that the petitioner also conspired together with the accused Binodanand Mishra and Mridul Kumar Mishra @ Babban Mishra and put a towel around the neck of the complainant and dragged him to some distance and thereafter pressed his neck with an intention to kill him.

5. I have heard learned counsel for the parties and perused the complaint petition.

6. I find that there is absolutely no allegation against the petitioner Dashmi Ram in the entire complaint. He has been summoned in the present case only because his name finds place in the column of the accused persons.

7. A Magistrate before whom a complaint is presented has to satisfy himself that it contains the necessary averments. The complainant would have to bring on record material to justify the court taking cognizance of the offence and summoning the accused persons.

8. Shedding light on the criticality of summoning a person in a criminal case, the Apex Court in ***Pepsi Foods Limited Vs. Special Judicial Magistrate [(1998) 5 SCC 749]***, has held that summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It has further held that the order of the Magistrate must reflect that he has applied his minds to the facts of the case and the law applicable thereto.

9. In the order issuing summons, in the present case, the learned Magistrate has not recorded his satisfaction about the prima facie case as against the petitioner and the role played by him in committing the offence.

10. In that view of the matter, the impugned order dated 17th April, 2009 passed in Complaint Case No. 527C of 2007, as far as the petitioner is concerned, cannot be justified in law.

11. Accordingly, the same is set aside as against the petitioner. The application stands allowed.

(Ashwani Kumar Singh, J)

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