

Arising from the above facts, the following questions arise for consideration:

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Babulal Singh s/o Yadunandan Singh r/o Bhandajor PS, Bph District

Babulal Singh, s/o Padmanandan Singh, 170 Bhandajoi, PS- Koli, District-

Nalanda at Bihar Sharif

1. The State of Bihar
2. Pankaj Singh, s/o of Janki Singh, age- 25 yrs.
3. Janki Singh, s/o Yadunandal Singh, age-60 yrs.
4. Snehi Singh, s/o Janki Singh, age-22 yrs.
5. Kristo Singh, s/o Janki Singh, age-23 yrs.
6. Mahendra Singh, s/o Yadunandan Singh, age-40 yrs.
7. Suma Devi, s/o Janki Singh, age-35 yrs.
8. Juli Devi, w/o Pankaj Singh, age-22 yrs.
9. Manita Devi, w/o Snehi Singh, age-20 yrs.
10. Sanju Devi, w/o Kristo Singh, age-20 yrs.

All are residents of Bhandajor, Thana road, District-Nawada

For the Petitioner : Mr. Ansul, Advocate
: Mr. Manish Mohan Kateyar, Advocate
For the Opposite Parties : Mr. Parmeshwar Mehta (App)

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Heard learned counsel for the petitioner as well

Petitioner is aggrieved by an order dated 05.05.2012 passed by learned Chief Judicial Magistrate, Nawabshah in complaint case no. 1368 of 2012 whereby and whereunder learned Lower Court had dismissed the complaint petition under Section 203 of the Code of Criminal Procedure.

Learned counsel for the petitioner, while assailing the order impugned, has submitted that at the present stage, the

learned Lower Court was expected to trace out only a prima facie case. From the order impugned, it is evident that learned Lower Court had scrutinized the material like a Trial Court which, at the present juncture, is not at all permissible and so, the order impugned is fit to be set aside.

Furthermore, it has also been submitted that from the S.A. as well as statement of witnesses, it is apparent that not only a prime facie case is duly found exposed rather complicity of the opposite parties are also visible therefrom and so, instead of dismissing the complaint under Section 203 of the Code of Criminal Procedure, the learned Lower Court should have taken cognizance of an offence and further would have summoned the O.P./second party.

The learned Additional Public Prosecutor opposed the prayer and submitted that the order impugned did not attract interference.

At an earlier occasion, the petitioner had filed complaint case no. 280 of 2010 which was sent to the local police for registration and investigation in terms of Section 156(3) of the Code of Criminal Procedure whereupon Nawada (Town) P.S. case no. 157 of 2010 was registered. It is evident that after completing investigation, final report was submitted at the end of the



investigating officer. However, as protest petition was pending since before, whereupon after accepting the final report, the learned Chief Judicial Magistrate proceeded with the protest petition and on the basis thereof, complaint case no. 1368 of 2012 was registered. From Annexure-3 series, it is evident that witnesses were examined during course of enquiry persuaded in terms of Section 202 of the Code of Criminal Procedure. From the narration of the deposition, it is apparent that the same happens to be unreliable, more particularly, relating to witness no. 4 Jitendra Singh as well as witness no. 2 Anugrah Singh who have claimed to be eye-witnesses whereunder they have stated that they have seen Tunni Singh (victim) with O.P./second party. The manner in which the aforesaid victim Tunni Singh was coming from Andhra Pradesh after an interval of so many months and further ignoring them while going in company of the proposed accused is not only unbelievable rather also speaks regarding unnatural conduct. Apart from this, one witness has stated that they were sitting in a rickshaw while other had stated that the accused were bifurcated in two parts. Tunni Singh along with male accused were sitting in one van while the lady accused were sitting in another van. The other witnesses, so examined, happen to be hearsay.

The aforesaid improbability in the background of approach of the so-called victim Tunni Singh who, as per narration of the prosecution was coming to his house after a long gap, show unnatural conduct whereupon, the instant prosecution appears to be malicious one.

Consequent thereupon, the instant petition is found non-maintainable and is accordingly, rejected.

(Aditya Kumar Trivedi, J.)

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