

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No. 12207 of 2014

Arising Out of PS.Case No. -125 Year- 2010 Thana -SIKARPUR District-
WESTCHAMPARAN(BETTIAH)

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1. Lalan Yadav Son of Sri Ganga Yadav
2. Yogendra Yadav Son of Sri Ganga Yadav
Both Residents of Village - Chauhatta, P.S. - Manpur, District - West Champaran.
3. Md. Ekram Alias Ekram Son of Aziz Ansari Resident of Ward No. - 9, Narkatiaganj, P.S. - Shikarpur, District - West Champaran.

.... Petitioners

Versus

1. The State of Bihar
2. Shambhu Yadav Son of Laxmi Yadav Resident of Village - Nandpur Khanti, P.S. - Shikarpur, District - West Champaran

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Umesh Chandra Verma, Adv.

For the Opposite Party/s : Mr. Anil Kumar, Addl. Public Prosecutor

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 02-09-2016

Heard Sri Umesh Chandra Verma, learned counsel for petitioners and Sri Anil Kumar, learned Addl. Public Prosecutor.

In this case, despite valid service of notice, the complainant/informant has preferred not to appear. It appears that the complainant/informant is not interested to pursue the matter.

Three petitioners, invoking inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, have prayed for quashing of an order dated 11-11-2013 passed in Trial No. 1821 of 2013 (arising out of Shikarpur P.S. Case No. 125 of 2010). By the said order, the learned Judicial Magistrate 1st Class, Bettiah, West Champaran has rejected the petition filed under Section 239 of the Cr.P.C. for discharge of petitioners.



Short fact of the case is that initially the opposite party no. 2 had filed a complaint petition, which was registered as Complaint Case No. 850-C of 2010 arraying five persons as accused. The petitioners, who are before this Court, were not made accused in the complaint petition. Subsequently, the complaint petition was referred to the police under Section 156(3) of the Cr.P.C. for registering F.I.R. and as such, an F.I.R., vide Shikarpur P.S. Case No. 125 of 2010 was registered on 11-05-2010 for offence under Sections 406, 420, 467, 468, 471, 384, 323, 504 of the Indian Penal Code and Section 27 of the Arms Act, 1959.

In this case, by order dated 29-07-2016, readable photocopy of the case diary as well as report were called for, which have been received and kept at flag 'A'. From the record, it is evident that police after investigation had submitted chargesheet under Sections 420, 467, 468, 471/120B of the Indian Penal Code against two F.I.R. named accused persons and petitioners, who were not named in the F.I.R., were also shown as accused in column no. 11 of the chargesheet.

At the stage of charge, a petition was filed on behalf of petitioners for their discharge, primarily on the ground that the entire allegation was civil in nature.

Learned counsel for petitioners, by way of referring to complaint petition, submits that the informant had alleged that he had purchased 5 katha and 12 dhur land from accused Uma Shankar Prasad

@ Uma Shankar Saraf on payment of entire consideration amount, however; it was alleged that the same vendor from the said land transferred about 6 dhurs of land to petitioner no. 1 (Lalan Yadav). Subsequently, to the reasons best known to the police, the petitioner no. 2 was also arrayed as accused.

It was argued that the land in question was purchased by the petitioner no. 1 after payment of due consideration amount and the boundary of the land was entirely different from the land, which was purchased by the complainant. So far as petitioner no. 3 is concerned, it has been argued that he has been arrayed as accused during investigation, since petitioner no. 3 stood as identifier to the sale-deed. The petitioner no. 2, being brother of petitioner no. 1, has been made accused.

Learned counsel for petitioners submits that though, there was no material in the case diary showing involvement of the petitioners, to the reasons best known to the police, the petitioners were arrayed as accused. The petitioners had filed a detailed petition for discharge, but the learned Magistrate in a mechanical manner has rejected the same. By way of referring to the impugned order also, he submits that land, which was purchased by the petitioners, is entirely different from the alleged land.

Learned Addl. Public Prosecutor has opposed the prayer of petitioners and submits that in case of strong suspicion also, the charge can be framed.

However, after going through the material on record, particularly; the complaint petition, which is basis of the F.I.R., it is evident that nothing was alleged against petitioners in the complaint petition. Moreover, the allegation appears to be civil in nature.

In view of materials brought on record, the Court is satisfied that without any cogent reason, petitioners were made accused. In such situation, the Court is of the considered opinion that allowing prosecution of petitioners will amount to allowing abuse of the process of the Court.

Accordingly, the order impugned i.e. order dated 11-11-2013 passed by learned Judicial Magistrate 1st Class, West Champaran at Bettiah in Trial No. 1821 of 2013 (arising out of Shikarpur P.S. Case No. 125 of 2010), whereby discharge petition of the petitioners was rejected is, hereby, set aside and the criminal proceeding against aforesaid three petitioners is quashed.

The petition stands allowed.

(Rakesh Kumar, J.)

Anay

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	05.09.2016
Transmission Date	05.09.2016