

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.26365 of 2013

Arising Out of PS.Case No. -778 Year- 2012 Thana -SARAN COMPLAINT CASE District-
SARAN

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1. Abhay Sinha @ Abhay Kr. Sinha son of Late R.R.P. Sinha Producer Bideshiya Bhojpuri Film
2. Ranjan Kumar Singh , son of Late R.R.P. Sinha
Director & Writer Of Bideshiya Bhojpuri Film,
Both Proprietor Of M/S Yashi Films And Television & Resident Of M-22, Sri Krishna Nagar, Road No.25, Bank Of India Building, Patna - 80001, P.S.- Budha Colony, District- Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. Rajendra Prasad Thakur son of Late Sheela Nath Thakur
Resident Of Village- Kutubuga Diyar, P.S.- Doriganj, District- Saran

.... Opposite Party/s

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Appearance :

For the Petitioner/s : **Mr. Neeraj Kumar**

For the Opposite Party/s : **Mr. Madan Kumar**

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 22-09-2016

Heard Sri Neeraj Kumar, learned counsel for the petitioners
and Sri Madan Kumar, learned Additional Public Prosecutor.

Earlier, notice was issued to the complainant/ opposite
party no. 2. Subsequently, it was reported by process server that
complainant /opposite party no. 2 has already died.

Two petitioners who are producer and director – cum-
writer of “Bideshiya” Bhojpuri film have approached this court



invoking its inherent jurisdiction under section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.”) with a prayer to quash an order dated 8.3.2013 passed by learned Judicial Magistrate , 1st Class, Saran (hereinafter referred to as “Magistrate”) in Complaint Case No. 778 of 2012. By the said order the learned Magistrate has taken cognizance of offence under Sections 379, 405, 418, 468, 467, 471, 501, 502/ 34 of the Indian Penal Code and Section 63 of the Copy Right Act, 1957.

Short fact of the case is that a complaint was filed in the court of learned Chief Judicial Magistrate, Chapra which was registered as Complaint Case No. 778 of 2012. The complaint was filed by one Rajendra Prasad Thakur claiming to be grand son of late Bhikhari Thakur. In the complaint petition it was alleged by the complainant that compilation of stories, songs , bhajans of late Bhikhari Thakur was published by Bihar Rashtrabhasa Parishad, Patna in 2005. There was an agreement in between Bihar Rashtrabhasa Parishad and complainant regarding copy right as well as royalty. It was alleged that the complainant from newspaper cutting noticed that a Bhojpuri picture in the name of “Bideshiya” was advertised. The complainant alleged that the accused persons without consent of the complainant had proceeded to publish a picture by way of copying publication of late Bhikari Thakur. The



complainant thereafter got legal notices served on accused persons however the accused persons did not pay any heed to the request of the complainant and thereafter complaint petition was filed. After examination of the complainant on S.A., witnesses were examined and thereafter the impugned order of cognizance was passed which has been assailed in the present petition.

At the very outset it was submitted by learned counsel for the petitioners that on the basis of complaint petition itself it is evident that the complainant had not witnessed the movie, which was published under the banner of the petitioners and as such, without witnessing or seeing the movie there was no occasion for the complainant to make allegation that story of the said movie was replica of the collection of late Bhikhari Thakur. It has been argued by learned counsel for the petitioners that without any application of criminal offences the present complaint petition was filed and in a mechanical manner the learned Magistrate has passed the order of cognizance. He further submits that had there been any case of infringement of copy right, then it was the publisher who was competent to file complaint against the petitioners. It is reiterated that the picture which was published by the petitioners was not exactly replica of the collection of late Bhikhari Thakur. On aforesaid grounds a prayer has been made to quash the order of cognizance as

well as entire proceeding.

Learned Additional Public Prosecutor has opposed the prayer, however on being asked as to whether in the complaint petitioner is there any material to suggest that complainant had witnessed the movie, learned Additional Public Prosecutor replied in negative. Meaning thereby that without any specific accusation the complaint was filed and the learned Magistrate in similar manner has passed the order of cognizance in a mechanical manner.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. In view of the facts disclosed in the complaint petition the Court is of the opinion that on such allegation allowing prosecution against the petitioners would amount to allowing abuse of the process of the Court and as such with a view to prevent abuse of the process of the Court, it is desirable to interfere with the impugned order. Accordingly, the order of cognizance dated 8.3.2013 passed in Complaint Case No. 778 of 2012 is hereby set aside and the petition stands allowed.

(Rakesh Kumar, J)

Praful/-

AFR/NAFR	NAFR
CAV DATE	NA
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