

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.844 of 2014

Arising Out of PS.Case No. -79 Year- 2013 Thana -ITADHI District- BUXAR

1. Bharat Yadav @ Bharat Prasad Singh Son Of Late Bishwanath Yadav
Resident Of Village-Sarsati, P.S.Itarhi, District-Buxar (Bihar)
2. Bindeshwari Yadav @ Bindeshwari Singh Son Of Late Sita Ram Yadav
Resident Of Village-Sarsati, P.S.Itarhi, District-Buxar (Bihar)
3. Shailendra Yadav @ Shailendra Prasad Singh Son Of Rajnath Yadav
Resident Of Village-Sarsati, P.S.Itarhi, District-Buxar (Bihar)

.... Petitioner/s

Versus

1. State of Bihar
2. Duwarika Yadaav, son of Shri Jagdev Yadav

.... Opposite Party/s

Appearance :

- For the Petitioner/s : Mr. Viveka Nand Singh, Advocate
For the Opposite Partty No.2 : Mr.Binod Kumar Singh, Advocate
Mr.Satyendra Pd. Singh, Advocate
For the State : Mr. Mayanand Jha(App)

CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL ORDER

6 17-11-2016 Heard learned counsel for the petitioners, learned
counsel for the Opposite Party No. 2 and learned A.P.P. for the
State.

The present application has been filed under Section
482 of the Cr. P. C. for quashing of the order dated 03.08.2013
passed by the learned Judicial Magistrate 1st class, Buxar in Itarhi
P. S. Case No. 79 of 2013, G.R. No. 1589 of 2013 whereby the
processes have been issued after cognizance being taken differing
with the final form for the offences punishable under Sections 341,
323, 379/34 of the Indian Penal Code. The accusation is of

assaulting the informant and his wife and taking Rs. 30,000/- and snatching jewellery from his wife, Dewanti Devi.

The Investigating Officer of the case has found the allegations made in the F.I.R. against the aforesaid three petitioners to be untrue during investigation while true against six other accused persons. On completion of investigation, a report has been submitted in the Court under Section 173 (2) of the Code of Criminal Procedure, the final form being charge sheet No. 101 of 2013 dated 30.07.2013. The learned Magistrate differing with the final form took cognizance of offence against the six accused persons and also the petitioners finding a prima-facie case against them on perusal of records and case diary.

Learned counsel for the petitioners submits that no reason has been assigned in the impugned order for differing with the final form. In this regard, by earlier order of this Court, the case diary was called, which has been received.

After going through the case diary, specially paragraphs- 4, 5, 7 and 9, which are the statement of witnesses, no where the witnesses have stated that they had seen the petitioners nor they had seen the petitioners snatching jewellery from Dewanti Devi, wife of the informant.

However, learned counsel appearing of the Opposite

Party No. 2 submits that the petitioners along with six other accused were found committing the said offence and hence, a prima-facie case under the Indian Penal Code is made out against them and the order of cognizance is in accordance with law.

It has been submitted by the learned counsel for the petitioners that there is a land dispute and Itharhi P.S.Case No.78/2013 has been lodged by the petitioners prior to the institution of the present case. All the witnesses have supported that there is land dispute between the parties.

From the perusal of the case diary and the statement of witnesses prima-facie, the ingredients of the offence against the petitioners, namely Bharat Yadav @ Bharat Prasad singh, Bindeshwari Yadav @ Bindeshwari Singh and Shailendra yadav @ Shailendra Prasad Singh are not attracted and neither supported by the prosecution witnesses. Hence, the order of cognizance so far as the petitioners are concerned, is quashed.

This application is accordingly, allowed.

(Nilu Agrawal, J)

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