

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.50158 of 2014

Arising Out of PS. Case No.-169 Year-2006 Thana- MANER District- Patna

-
1. Om Prakash Das son of Dhoda Lal Das
 2. Dhoda Lal Das son of Late Hira Lal Das
 3. Anil Kumar Das @ Anil Kumar son of Dhoda Lal Das
 4. Shobha Devi @ Shobha Kumari wife of Anil Kumar Das
 5. Vaijenti Devi @ Vaijenti Kumari wife of Om Prakash Das @
Prakash Das All resident of village - Chhihattar, Police Station -
Maner, District - Patna.

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Anil Kumar

For the Opposite Party/s : Mr. SHAILENDRA KUMAR 1 (APP)

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 29-11-2017

Heard learned counsel for the parties.

The present petition under Section 482 of the Cr.P.C has been filed for quashing the order dated 28.08.2014, passed by learned Additional District & Sessions Judge-III, Danapur, Patna in Criminal Revision No. 899 of 2011 arising out of Maner P.S. Case No. 169 of 2006, dismissing the revision petition filed by the revisioner-petitioners affirming the order dated 22.07.2011 passed by learned Additional Chief Judicial Magistrate, Danapur, by which cognizance under Sections 147, 148,



149, 448, 323, 379 and 504 of the IPC has been taken against the petitioners.

Briefly stated, the facts of the case as stated by the informant in his written complaint is that on the date of occurrence, he was in his house when all the accused persons came and abused him. After hearing the sound of abusing, the informant came out of his house and prevented accused from abusing him whereas petitioner no. 1 Om Prakash Das, armed with danda assaulted on back side of the informant and fled away and entered into his house, on which all accused persons came into the house of the informant, which included petitioner no. 3 Anil Kumar, and thereafter petitioner no. 2 Dodha Lal Das, assaulted him from leg and fists, by which the informant was injured. Ram Babu Ram and Om Prakash Das assaulted the informant resulting into injury. On alarm being raised by the informant the mother of the informant came there and thereafter mother of accused namely Shoba Devi petitioner no. 4, caught her hair and thereafter petitioner no. 5 Vaijenti Devi, hit her from leg and fists on account of which she received injuries on her different parts of body i.e., stomach, waist



and face. The accused persons snatched the gold chain from the mother of the informant. On the basis of such written complaint made to the Officer-in-Charge, Police registered Maner P.S. Case No. 169 of 2006 dated 08.09.2006 for the offences punishable under sections 147, 148, 149, 448, 323, 379 and 504 of IPC against six persons including the petitioners.

The counsel for the petitioners has submitted that they are innocent and have been falsely implicated in this case. The present case is a counter blast to the case instituted by the petitioner no. 1 Om Prakash Das, in Maner Police Station which was registered as Maner P.S. Case No. 137 of 2006 dated 01.8.2006 for the offences punishable under Sections 323, 324, 504 read with 34 of IPC against three accused persons namely Mukesh Ram and Raj Kumar, both sons of Ravindra Ram.

On the basis of said FIR chargesheet was submitted in the court of A.C.J.M, Danapur, for the offences punishable under Sections 147, 148, 149, 448, 323 and 504 of the IPC against six accused persons including the petitioners. It has been further stated that chargesheet



bearing no. 45 of 2008 dated 21.02.2008 was submitted by the investigating officer in the Court of A.C.J.M, Danapur, in which the delay has not been explained. Even after submission of chargesheet, no cognizance was taken by the learned court and cognizance was taken on 22.07.2011, but the delay has not been condoned. It has been further submitted that cognizance has also been taken under section 379 of IPC but no ingredient constituting the offence under Section 379 of IPC, is present in this case. The court below has not considered Section 468 and 473 of Cr.P.C regarding bar of limitation for taking cognizance and no independent witness had been examined by the I.O. before filing chargesheet against the petitioners, as such the order taking cognizance is illegal and not sustainable in the eye of law.

Chargesheet has been submitted by the police before the trial court and the trial court after considering materials available on record including FIR, statement of witnesses, case diary and evidence collected during investigation found *prima facie* case to be made out against the accused-petitioners and after condoning the delay, took cognizance of the offence by its order dated 22.07.2011



under Sections 147, 148, 149, 323, 448 504 and 379 of the Indian Penal Code and issued summons to accused petitioners for their appearance to face the trial.

Aggrieved by the order of trial court taking cognizance petitioner preferred a revision petition before the Sessions Judge, Danapur and after due consideration of revision petition filed by petitioners, the same was dismissed by the revisional court by its order dated 28.08.2014. The revisional court after going through the record found that the order of cognizance taken by the trial court is sustainable in the eye of law and thereafter dismissed the revision petition of the petitioners.

The High Court in its inherent jurisdiction cannot substitute the view of trial court with respect to taking cognizance on the basis of materials available before the trial court. The sufficiency and adequacy of material on the basis of which cognizance is taken is the function of the trial court and the High Court in its inherent jurisdiction cannot substitute its own view regarding issuance of summons by the trial court as the order of trial court taking cognizance against the accused petitioners had been



affirmed by the revisional court, as such I am not inclined to interfere in the order passed by both the courts below, however, the petitioners are granted liberty to raise all the issues raised in this petition as well as all other issues available to them in law at the subsequent stage of trial i.e at the time of consideration of his discharge petition or framing of charge, if not already framed.

With such liberty and observation the present petition is disposed of.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	30.11.2017
Transmission Date	30.11.2017

