

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No. 49345 of 2013

Arising out of P.S. Case No. - 56 Year - 2011 Thana -TURKAULIYA District - EASTCHAMPARAN (MOTIHARI)

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1. Deo Narain Sahni, Son of Late Paspas Sahni
 2. Bhikhari Sahni
 3. Manoj Sahni
 4. Balaram Sahni, All three sons of Deo Narain Sahni and all four resident of village - Koreyan, P.S. - Turkaulia, District - East Champaran

.... Petitioners

Versus

1. The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioners : Mr. Raghav Prasad, Advocate

For the Informant : Mr. Ambuj Nayan Chaubey, Advocate

For the State : Mr. Sadanand Paswan, Spl. P.P., SC/ST (P.O.A.) Act

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 23-01-2017

Heard learned counsel for the petitioners and learned Additional Public Prosecutor for the State as well as learned counsel for the informant.

2. This is an application for quashing the order dated 26.10.2012 passed in Turkaulia Police Station Case No. 56 of 2011 whereby the learned In-Charge Chief Judicial Magistrate, Motihari has disagreed with the police report and taken cognizance under Sections 447, 341, 323, 427, 504, 379/34 of the Indian Penal Code as well as under Section 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The petitioners are accused in the aforesaid case.

3. Submission of the petitioners is that the informant,



just to grab the ancestral land of the petitioners, has got a fictitious sale deed from some of the agnates of the petitioners and just to take forceful possession and to pressurize the criminal prosecution has been launched which is nothing but an abuse of process of the court.

4. On the other hand, learned counsel for the informant submits that at this stage, the Court cannot go into the meticulous appreciation of the evidence and the finding of the court below is based on material in the case diary. Probable defence cannot be looked into if the offences are, prima facie, made out.

5. According to the First Information Report, the informant Gopal Jee Paswan had purchased Plot No. 991 under Khata No. 442, Area 1 Katha through registered sale deed dated 25.05.2007 from Ram Prit Sahani @ Ram Pravesh Sahani. The petitioners started obstruction in peaceful possession of the informant. Thereafter, proceeding under Section 144 and 107 Cr.P.C. was initiated. On 05.02.2011, the petitioners came to the house of the informant and started abusing taking caste name of the informant. They further committed assault taking caste name which was witnessed by the co-villagers. The case diary reveals that other witnesses have also supported the prosecution case as eye-witnesses of the occurrence.

6. Law is well settled that while exercising the power under Section 482 Cr.P.C., the Court should be cautious and careful to



interfere with the cognizance order unless a bare perusal of the allegation discloses no offence or the prosecution appears to be malicious and vexatious one.

7. In my view trustworthiness of the material disclosing offences and probable defence cannot be looked into at this stage. Hence, there is no merit in this application. It stands dismissed.

8. The petitioners shall be at liberty to raise their grievances at the stage of framing of charge and the court below shall pass a reasoned order.

(Birendra Kumar, J.)

Kundan

AFR/NAFR	
CAV DATE	
Uploading Date	28.01.2017
Transmission Date	28.01.2017

