

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.47134 of 2014

Arising Out of PS. Case No.-454 Year-2012 Thana- BHAGALPUR COMPLAINT CASE
District- Bhagalpur

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Ranjan Kumar Son of Shri Suresh Mandal resident of village - Patamber, P.S.
Sikendra, District - Jamui

... .. Petitioner/s

Versus

1. The State of Bihar
2. Uday Narayan Singh son of Late Yugal Prasad Singh resident of Mohalla -
Anandgarh Colony, P.S. Tilkamanjhi, District - Bhagalpur

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar Jha, Adv
For the Opposite Party/s : Mr. S.N SHUKLA (APP)

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 11-10-2017

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 28.01.2014 passed
by the learned District & Sessions Judge, Bhagalpur in Criminal
Revision Case No. 18 of 2014 by which criminal revision
application filed by the petitioner being Criminal Revision Case
No. 18 of 2014, had been dismissed as well as the order dated
30.10.2013 passed by the learned Judicial Magistrate, 1st Class,
Bhagalpur in Complaint Case No. 454 of 2012, by which
cognizance of the offence punishable under Sections 323 and
504 of the Indian Penal Code was taken against the petitioner.

Briefly stated, the facts of the case is that



Complainant-Opposite Party No. 2 on 14.03.2012 filed a complaint that on 09.03.2012 at about 4:00 pm, when the opposite party no. 2 was sitting on his verandah, accused persons including the petitioner came there and started abusing him and the petitioner also threatened the complainant-opposite party no. 2 that he was the S.H.O. of Tilkamanjhi P.S and will not be allowed to live in the mohalla and threatened to kill him in a police encounter. It has further been stated by the complainant-opposite party no. 2 that the petitioner also abused the people who had come at his house to celebrate Holy Milan.

The complaint petition of the complainant-opposite party no. 2 was registered as Complaint Case No. 454 of 2012 and statement of complainant-opposite party no. 2 on S.A. as well as in support of his claim, four witnesses were also examined and after inquiry the court below took cognizance of the offence punishable under Sections 323 and 504 of the Indian Penal Code by order dated 30.10.2013 and issued summons against the accused persons for their appearance to face the trial. The petitioner against the order taking cognizance dated 30.10.2013 filed Criminal Revision No. 18 of 2014 before the learned District & Sessions Judge, Bhagalpur and the same was dismissed vide order dated 28.01.2014, at the same stage itself.



The petitioner is A.S.I of Bihar Police and at the relevant point of time was posted in the Tilkamanjhi P.S and was residing in rented house, which belonged to one Amila Devi, who is the mother of co-accused Kumar Kunal and there is dispute between his landlord and complainant-opposite party no. 2 and on account of said dispute, the petitioner has been implicated in this case, as he was tenant in the house of Amila Devi.

The court of Judicial Magistrate, 1st Class, Bhagalpur, after going through the materials available on record, S.A of complainant-opposite party no. 2 and statement of his four witnesses examined during trial found *prima facie* case made out against the petitioner under Sections 323 and 504 of the Indian Penal Code and summoned them to face the trial. Aggrieved by the said order of taking cognizance, the petitioner filed Criminal Revision No. 18 of 2014 which was also dismissed by the revisional court on 28.01.2014.

At the stage of taking cognizance the court has to form an opinion that *prima facie* case on the basis of materials available on record against the accused is made out or not. The defence of the accused cannot be considered at the time of taking cognizance. This Court also in its inherent jurisdiction cannot substitute its view regarding sufficiency of material



before the court below and substitute its view against summons order issued by the trial court.

Although from the documents enclosed with this petition, it appears that there is land dispute between the informant and other accused and said dispute has been decided in favour of other accused and against the complainant-opposite party no. 2, as such other accused persons were entitled to have benefit of orders passed by the revenue court and civil court.

However, I am not inclined to interfere with the order dated 28.01.2014 at this stage and the petitioner has liberty to raise all the issues raised before this Court as well as other points available to him in accordance with law at subsequent stage i.e. at the time of discharge petition/framing of charge, if not already framed.

With the said observation and liberty, this petition is disposed of.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	19.10.2017
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