

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.47430 of 2014

Arising Out of PS.Case No. -6 Year- 2012 Thana -SC/ST District- ARRARIA

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1. Md. Saifullah S/o Hazi Hasamul
2. Majid @ Murshid @ Md. Murshid Alam S/o Md. Abid
3. Md. Arif, S/o Karimuddin
4. Md. Perwez S/o Md. Hakim All residents of village - Hasanpur, P.S. -
Raniganj, District - Araria.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Dauna Devi W/o Sukdeo Rishideo Resident of Village - Hasanpur, P.S. -
Raniganj, District - Araria.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Anil Prasad Singh, Advocate
For the Opposite Party/s : Mr. Sanjeev Kumar, Advocate
For the State : Mr. Sanjay Kumar Singh, (APP)

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL ORDER

2 12-10-2017 This petition under Section 482 of Code of Criminal Procedure has been filed for quashing the order dated 17.11.2014 passed by learned Chief Judicial Magistrate, Araria in G.R. No. 1555 of 2012 arising out of Araria SC/ST P.S. Case No. 6/2012 by which the cognizance taken under Sections 341, 342, 323, 504, 354/34 of the Indian Penal Code and Section 3(1)(x) (xi) of the SC/ST Act against the petitioners.

2. Briefly stated, the facts of the case is that informant opposite party No. 2 on 13.07.2012 filed a written complaint before the Officer-in-Charge, SC/ST P.S. Araria alleging therein that on 11.07.2012 at about 6.00 PM the informant along with



girls were returning after doing work from her villager Girmanad Yadav. As soon as they reached at ridge of jute field of petitioner Md. Saifullah then all of a sudden petitioner started abusing by their caste name and thereafter he outraged the modesty of the girls and assaulted all the three. On raising alarm by the informant the villagers came there and petitioner assaulted them by Sickle and he sustained injury on his neck and Mina Devi on hand. All the accused persons along with 7 to 8 other persons armed with lathi, farsa entered into the house at 8:00 PM and petitioner threatened to kill them by his licensing gun and also was saying to vacate his land for which they took Basgit Parcha and red card. The informant has been granted Basgit Parcha over the land of petitioner and petitioner always threatened to vacate his land.

3. On the basis of aforesaid written complaint police registered and instituted Araria SC/ST P.S. Case No. 6 of 2012 under Sections 147, 149, 323, 342, 452, 380, 354, 504 of the Indian Penal Code and Sections 3(1)(x)(xi) of SC/ST Act.

4. After investigation police has submitted charge sheet against the petitioners under Sections 341, 323, 342, 504, 354 read with Section 34 of the Indian Penal Code and Section 3(1)(x) of SC/ST Act vide charge sheet dated 08.09.2014.

5. It has been submitted by the counsel for the petitioners



that petitioners have been falsely implicated in this case on account of land dispute between the parties. It has been further submitted by the counsel for the petitioners that there was case and counter case between the parties on account of intervention of friends and well-wishers of both the parties, all the case pending between the parties had been compromised and the compromise petition to this effect was filed in the court below. However, without taking any notice of compromise petition order taking cognizance has been passed.

6. On the basis of materials available on record charge sheet and case diary and statement of witnesses recording during investigation and evidences collected, court below has found a prima facie case made under Section 341, 342, 323, 504, 354/34 of the Indian Penal Code and Section 3(1)(x)(xi) SC/ST Act and took cognizance of the offence by order dated 17.11.2014 and issued summons to the petitioners for appearance to face the trial. At the time of taking cognizance, the trial court has only to form a prima facie opinion whether any criminal offence is made out against the accused or not. Defence of the petitioners cannot be examined by the trial court at that time. The High Court in its inherent jurisdiction cannot substitute its view for issuance of summons orders by the trial court. The sufficiency and adequacy of material to form a



prima facie opinion is to be considered by Trial Court. The offence are not compoundable.

7. Considering the facts and circumstances of the present case, I am not inclined to interfere with the order taking cognizance dated 17.11.2014.

8. However, petitioners are at liberty to raise all the issues raised in this petition as well as all other issues available to them in law at the time of framing of charge.

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

(S. Kumar, J)

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