

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.10031 of 2014

Arising Out of Case No. -2953 Year- 2011 Thana -PATNA COMPLAINT CASE District- PATNA

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1. Smt. Kishori Thakkar @ Kishori Thakur, wife of Late Ravindra Prasad Singh, Head Clerk, Patna Science College, Ashok Rajpath, Patna
 2. Dharmesh Thakur, Son of Smt. Kishori Thakkar @ Kishori Thakur
 3. Priti Kumari, Wife of Yogendra Thakur
 4. Yogendra Thakur, Son of Permanand Thakur
 5. Priya Thakur, Wife of Dharmesh Thakur @ Dharmesh Thakur,
- All are residents of C/O Smt. Kishori Thakkar @ Kishori Thakur, Patna Science College Campus, Eastern Side Quarter, Police Station- Pirbahore, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. Santosh Kumar Son of Ramdeo Pandit, Resident of C/O- Ramdeo Pandit, Patna Science College Campus, Eastern Side Of 4th Grade Quarter, Police Station- Pirbahore, District- Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Kundan Kumar, Advocate.

For the Opposite Party/s : Mr. Gulnar Begum(App)

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL ORDER

6 25-01-2017 Heard learned counsel for the petitioners and the learned A.P.P. for the State. However, no one appears on behalf of the O.P. No. 2 even after adjournment of the case on last occasion though notice was validly served.

This quashing application, under Section 482 of the Criminal Procedure Code, has been filed by the petitioners, who are the accused in Complaint Case No. 2953(C) of 2011, for quashing the cognizance order dated 15.12.2012.

Learned counsel appearing on behalf of the petitioners submits that cognizance has been taken under Sections 379 and 426 of the Indian Penal Code with regard to theft and mischief



though the allegation imputed in the complaint petition as well as the evidence found during the enquiry stage, did not constitute a, *prima facie*, case under the aforesaid sections despite that cognizance was taken against the petitioners. It is submitted that there was dispute of taking water from the tap and also there was dispute with regard to occupation of the quarter by the complainant in the campus of the Science College (hereinafter referred to as the 'college') with the college administration and in order to put pressure, this complaint case, even against the Principal of the college, was lodged. However, by the impugned order, the process was not issued against the Principal of the college. The witnesses examined during enquiry stage also did not claim that they saw these petitioners committing theft of utensils. However, they have stated that it was kept near the tap which was found missing and the petitioner no. 1, Smt. Kishori Thakkar, is the Head Clerk in the college and other accused persons are her family members.

The allegation in the complaint petition is that the petitioner no. 1 got a quarter allotted in her name by playing fraud and acquired illegal occupation, however, the Administration of the college also favours her and they used to create nuisance by running a tap water regularly and discharging water at the back of the house so that complainant could not get water in her quarter



and on the alleged date of occurrence, they committed theft of utensils and other household articles while complainant family was not in house but the police did not lodge the case against them, then he filed complaint case.

The complainant in the statement recorded on solemn affirmation, has stated that some utensils and clothes were kept outside the house and got stolen; moreover none of the enquiry witnesses have specifically named anyone that any of the accused persons has stolen utensils or clothes.

Perused the allegation levelled against the petitioners in the complaint case and the statements of the witnesses recorded during enquiry. None of the witnesses have categorically stated that they have seen the petitioners committing theft of utensils kept outside the complainant's house or damaging their utensils. So as no *prima facie* case is being made out against the petitioners under Sections 379 and 426 of the Indian Penal Code, hence the impugned cognizance order as well as further criminal proceeding is hereby quashed as the continuation of the criminal proceeding would be abuse of process of court. In the result, this application is allowed.

(Arun Kumar, J)

Sujit/-

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