

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.35621 of 2013

Arising Out of PS.Case No. -105 Year- 2011 Thana -ROSERA District- SAMASTIPUR

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Balram Rai Son Of Anil Kumar Rai, Resident Of Village- Bhirha P.S -
Roserea, District - Samatipur

.... Petitioner/s

Versus

1. State Of Bihar
2. Raj Kumar Rai, S/O- Of Budhi Sagar Rai Resident Of Village - Bhirha,
P.S. - Rosera, District Samastipur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Mishra, Advocate

For the Opposite Party/s : Mr. Anuj Kr. Srivastava (App)

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

3 17-01-2017 This application has been filed on behalf of the

accused petitioner against the order dated 15.1.2013 passed by

learned A.C.J.M., Rosera, Samastipur, in Rosera P. S. Case no.

105 of 2011 corresponding to Tr. No. 2647 of 2012 whereby

cognizance of the offence under Sections 147, 148, 149, 323, 324

and 307 of the Indian Penal Code has been taken against the

petitioner and other accused persons.

The prosecution case, in short, is that petitioner along

with other accused persons with variously armed, assaulted

informant and his father. In course of assault informant received

injuries on his leg and head. The occurrence took place due to

land dispute.



On the basis of fardbeyan Rosera P. S. Case no. 105 of 2011 has been instituted against the petitioner and others and police after investigation submitted Chargesheet against other co-accused persons and final form against the petitioner not finding the case true against him. However, learned A.C.J.M., Rosera, Samastipur, vide order dated 15.1.2013 had taken cognizance against the petitioner differing with the final form.

It has been submitted on behalf of the petitioner that in this case name of the petitioner has been inserted in the last line of the F.I.R. and even there is no specific allegation against the petitioner. Further, during the course of investigation, none of the witnesses has named this petitioner as he was not present at the place of occurrence. The police after investigation submitted final form against the petitioner but learned Magistrate in a mechanical way has taken cognizance against the petitioner without giving any cogent reason. As such, the order taking cognizance against the petitioner is bad and continuance of the present proceeding against the petitioner is abuse of the process of the court.

Heard learned A.P.P. also. On perusal of the case diary, he could not point out any allegation against the petitioner.

Having heard both sides. From perusal of the F.I.R., case diary and the impugned order, it appears that there is nothing



against the petitioner and final form has been submitted against him. However, learned Magistrate has taken cognizance against the petitioner differing with the final form, without giving any reason for that as he has to assert reason for differing with the final form. In the present case, on perusal of the case diary, it appears that there is absolutely nothing against the petitioner. Hence, the impugned order dated 15.1.2013, so far petitioner is concerned, is not sustainable in the eye of law and the same is accordingly quashed.

This application is allowed.

(Vinod Kumar Sinha, J)

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