

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.15764 of 2016

Arising Out of PS.Case No. -23 Year- 2014 Thana -SC/ST PS District- BUXAR

- =====
1. JAWAHAR UPADHYAY @ JAWAHIR UPADHYAY @ Jawahir Upadhyay
Son of Late Anjani Upadhyay
 2. Chandrabhushan Upadhyay @ Shatrughan Upadhyay @ Chandra Shekhar
Upadhyay
 3. Mahendra Upadhyay Both 2 and 3 sons of late Nirmal Upadhyay, All Resident of
Village- Kamdharpur, P.S.-Koran Sarai, Dist.-Buxar

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bachan Jee Ojha

For the Opposite Party/s : Mr. Jharkhandhi Upadhyay, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

Date: 21-08-2017

In view of the order dated 19.08.2016, the application of petitioner nos. 1 and 2, namely, Jawahar Upadhyay @ Jawahir Upadhyay and Chandrabhushan Upadhyay @ Shatrughan Upadhyay @ Chandra Shekhar Upadhyay is dismissed as withdrawn.

Heard learned counsel for the petitioner no. 3, Mahendra Upadhyay and learned A.P.P. appearing on behalf of the State.



Petitioner, by means of this application under section 482 of the Cr. P.C., has invoked the inherent jurisdiction of this Court with prayer to quash the order or taking cognizance dated 25.01.2016 passed in Buxar SC/ST P.S. Case No. 23 of 2014 passed the learned A.C.J.M., 1st Buxar, whereby cognizance has been taken against the petitioner for the offence under sections 323, 341, 379, 504/34 of the I.P.C. and also under section 3(i)(x) of S.C./S.T. Act.

The contention of learned counsel for the petitioner is that no offence against the petitioner is disclosed and the present prosecution has been instituted with *mala fide* intention for the purposes of harassment. It is further submitted that the present false case has been lodged by the informant only to pressurize the petitioner to compromise the civil case, bearing Title Appeal No. 12 of 2007, which is pending in the Court below, so that he could grab the landed property of the petitioners. In support of his contention, learned counsel for the petitioner has placed reliance on the judgment of this Court in the case of ***Chhattu Lal Sah and Ors. Vrs. State of Bihar reported in 2005(2) P.L.J.R. 76.***

Learned counsel appearing for the State opposes the application by contending that there are allegations against the petitioner. No ground for quashing the entire proceedings is made



out and the above cited judgment is applicable in this case.

From perusal of the materials on record and looking into the facts of the case, at this stage, it cannot be said that no offence is made out against the petitioner. All the submissions made at bar relates to the disputed questions of fact, which cannot be adjudicated upon by this Court in exercise of power conferred under section 482 Cr. P.C. Only a *prima facie* satisfaction of the Court about the existence of sufficient ground to proceed in the matter is required. At this stage, only *prima facie* case is to be seen in the light of the law laid down by Supreme Court in cases of ***R.P. Kapur Vs. State of Punjab, A.I.R. 1960 SC 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P. Sharma, 1992 SCC (Cr. 192, Zandu Pharmaceutival Works Ltd. Vs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283 and recently in A.R.C.I. Vs. Nimra Cerglass Technics (P) Ltd. (2016) 1 SCC 348.*** The submissions made by the learned counsel for the petitioners call for adjudication on pure questions of fact which may be adequately gone into by the trial Court in this case. This Court does not deem it proper, and therefore, cannot be persuaded to have a pre-trial before the actual trial begins. The disputed defence of the accused cannot be considered at this stage. Moreover, the petitioner has got a right of discharge through a



proper application for the said purpose and he is free to take all the submissions in the said discharge application before the trial Court.

The prayer for quashing the order taking cognizance is refused.

The application, accordingly, stands dismissed.

(Arvind Srivastava, J)

Shailendra/-

AFR/NAFR	NAFR
CAV DATE	NA
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