

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.18940 of 2016

Arising Out of PS.Case No. -666 Year- 2014 Thana -SAHARSA District- SAHARSA

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1. Mir Kuddus
2. Mir Mahfooz @ Mir Mahfooz Alam both are son of Late Mir Aziz Both are resident of Mohalla- Saharsa Basti, Ward No.38, Police Station+District Saharsa.

.... Petitioner/s

Versus

1. The State of Bihar
2. Md. Mukhtar Alam son of Late Badruzzama Khan Resident of Mohalla Dumrail Ward No.38, Police Station+District- Saharsa.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Md. Harun Quareshi

For the Opposite Party/s : Mr. B.Ram(App)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

2 13-04-2017

Heard learned counsel for the parties.

The present application has been filed for quashing the order dated 30.7.2015/9.9.2015 passed by the learned C.J.M. Saharsa in Saharsa Sadar P.S. Case No. 666 of 2014 whereby process has been directed to be issued against the petitioners after cognizance being taken under sections 406 and 420/34 of the Indian Penal Code.

The prosecution case is that the petitioner executed sale deed with regard to a land of his brother's share, appertaining to Khata (old) no. 25, Plot (old) nos. 560 and 561 Tauzi No. 3524 Thana no. 186 measuring an area of 8.73 decimals situated in



Mauza – Dumrail in favour of the informant but subsequently one of the brothers of the petitioner executed sale deed in favour of other persons.

Initially, Complaint Case No. 921 of 2014 was filed but the same was transmitted under section 156(3) Cr.P.C. to police station and accordingly Saharsa Sadar P.S. Case No. 666 of 2014 was registered on 4.9.2014 under sections 323,341,420,406,467,468 and 511/34 of the Indian Penal Code.

On conclusion of investigation, police submitted final form (chargesheet) under sections 406 and 420/34 of the IPC and consequently, on perusal of the police report, the learned Chief Judicial Magistrate, Saharsa vide order dated 30.7.2015/9.9.2015 directed for issuance of process against the petitioners after cognizance being taken under sections 406 and 420/34 of the Indian Penal Code.

It is submitted by learned counsel for the petitioners that for the civil nature of dispute maliciously the accusation has been levelled.

Learned counsel for the State submits that on finding prima facie case after perusing the materials in the case diary the process has been directed to be issued against the petitioners.

Considering the rival submission of the parties, in



view of this court, at the stage of exercising jurisdiction under Section 190(1)(b) of the Code of Criminal Procedure (hereinafter referred to as the 'Code') the Magistrate has only to see whether a prima facie case is made out. Such order of issuance of process can only be interfered with, if it reflects that the same has been passed with complete non-application of mind. The only added advantage to the Magistrate exercising jurisdiction at the stage of 190(1)(b) of the Code is that he has the occasion to go through the police report submitted under section 173 (2) Cr.P.C. which contains the materials collected during investigation. This is not the stage when the Magistrate is supposed to consider the defence of the accused as has been held in the case of State of Orissa Vs. Devendra Nath Padhi (2005) 1 Supreme Court Cases 568. Paragraph 23 reads as follows:

“23. As a result of aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. Satish Mehra's case holding that the trial court has powers to consider even materials which accused may produce at the stage of Section 227 of the Code has not been correctly decided.”

More over, the impugned order is dated



30.7.2015/9.9.2015 but there is nothing on record to show the present stage of the case.

Hence, at this stage, this Court is not inclined to interfere. The present quashing application is disposed of with liberty to the petitioner to raise all the contentions at the appropriate stage of proceeding.

(Dinesh Kumar Singh, J)

Anil/-

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