

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.32002 of 2014

Arising Out of PS. Case No.-131 Year-2010 Thana- CHAUTHAM District- Khagaria

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1. Gandori Sada Son of Janak Sada
 2. Devo Chourasiya Son of Late Adhik Prasad
 3. Rabindra Chourasiya @ Rabindra Prasad Chourasiya Son of Late Biranchi Prasad All resident of village- Bhutauli Malpa, P.O.- Bhutauli Malpa, P.S.- Choutham, District- Khagaria.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Tulsi Kumar Sah Son of Posan Sah All resident of village- Bhutauli Malpa, P.O.- Bhutauli Malpa, P.S.- Choutham, District- Khagaria.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Mrityunjay Kumar
For the State	:	Mr. PRADIP NR.KUMAR(APP)
For O.P. No.2	:	Mr. Vijay Kumar, Advocate
		Mr. Shashi Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL JUDGMENT
Date : 13-09-2017

Heard learned counsel for the petitioners, learned counsel for opposite party no.2 as well as learned APP appearing on behalf of the State.

2. The petitioners are accused in Complaint Case No.949C of 2012. They seek quashing of the order dated 24.10.2013 passed in the said case whereby cognizance has been taken under Section 417 of the Indian Penal Code by learned S.D.J.M., Khagaria.

3. A complaint was lodged by opposite party no.2, which was sent to the police under Section 156(3) Cr.P.C. for registering FIR. Short fact of the case is that the complainant had given a mare to



Gandori Sada on condition that he would take care of the mare and after delivery of calf they would share the 50% each amount after sale of the calf and the mare would be returned back but neither the mare was returned back nor calf was given to the complainant.

4. Learned counsel for the petitioners contends that it is a malicious prosecution. The son of petitioner no.1 had lodged FIR against Tulsi Kumar Sah, the present complainant, on 18.06.2010 under Sections 341, 323, 504, 506 and 379 of the Indian Penal Code as well as under Section 3(X) of S.C./S.T. Act. This case is much prior to the present complaint lodged on 25.06.2010, so in retaliation this frivolous case was lodged and the case lodged by the petitioners is that Tulsi Sah had taken away the horse of Garchun Sada, son of petitioner no.1, forcibly and also abused and assaulted him. The police also submitted closure report finding the case as a mistake of fact, so protest petition was filed and treating it as a complaint, after inquiry, cognizance has been taken but some of the inquiry witnesses said that they are not the eye-witness and no document was on record to show that the mare was given to the accused persons.

5. Contrary to that, learned counsel for opposite party no.2 submits that it is a case of cheating as neither the mare nor the money of the sale proceed of calf was given to opposite party no.2.



6. Having considered the submissions of both sides, the Court finds that the present case was lodged after lodging of the case by the son of petitioner no.1 against the present informant. There is no document to show that any mare was given to the petitioners by the accused persons, police also found the case not true against the accused persons and found it as a mistake of fact, so in such position, the continuation of the proceeding in the present matter would be abuse of the process of the Court, so the entire criminal proceeding inclusive of cognizance order dated 24.10.2013, passed by learned S.D.J.M., Khagaria in Complaint Case No.949C of 2012 is set aside.

7. This application stands allowed.

(Arun Kumar, J.)

S.KUMAR/-

AFR/NAFR	NAFR
CAV DATE	NA
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