

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.31335 of 2014

Arising Out of PS.Case No. -300 Year- 2012 Thana -KADAMKUAN District- PATNA

- =====
1. Chandramani Devi wife of Sri Lalan Sharma
 2. Vikash Kumar son of Sri Lalan Sharma
 3. Guriya Kumari wife of Vikash Kumar
- All resident of Saraswati Niwas Apartment, Road No. 12, Rajendra Nagar, P.S. Kadam Kuan, P.S. and District - Patna
4. Awadh Nandan Sharma son of Late Naresh Sharma
 5. Shashi Bhushan son of Awadh Nandan Sharma
- All resident of village - Mahua Bigha, P.S. Paras Bigha, District - Jehanabad

.... Petitioner/s

Versus

1. The State of Bihar
2. Lalan Sharma son of Late Kameshwar Singh Resident of Saraswati Niwas Apartment, Road No. 12, Rajendra Nagar, P.S. Kadam Kuan, P.S. and District - Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 04-07-2017

Heard learned counsel for the parties.

2. The petitioners have challenged the order taking cognizance dated 05.03.2013 passed by Sri Ashutosh Khetan, Judicial Magistrate, 1st Class, Patna in Kadam Kuan P.S.Case No. 300 of 2012 arising out of Complaint Case No. 1965C of 2012 whereby he has taken cognizance under Sections 420, 467, 468, 471 and 120B of the Indian Penal Code.



3. Learned counsel for the petitioners submits that the complaint was lodged by the complainant, who happens to be the husband of the petitioner no. 1, and father of petitioner no. 2 and rest are other family members. The police, after investigation, has not sent up accused persons for trial except the petitioner no. 2 Vikash Kumar, moreover no *prima facie* case is made out against all the accused persons as stated in the complaint petition. It only contains some statements giving reference to cases earlier lodged by either side and there is no allegation of creating any forged document or any action of cheating done by the petitioners so it is a malicious prosecution. He submits that in fact the dispute between both sides is for share in the property because complainant has married with another lady and does not want to give due share to his first wife and son, therefore, this false case was lodged.

4. Learned counsel appearing on behalf of the O.P. No. 2 submits that allegation against the O.P. No. 2 is of extortion making demand of Rs. 30 lacs.

5. Having considered the rival submissions and on perusal of record, I find that there is no whisper in the complaint regarding any forged document created by the petitioner no. 2. The allegation levelled in the present petition even if remains unrebutted no offence of cheating and creating forged documents is made out. Therefore,



impugned order taking cognizance including the subsequent criminal proceeding in the case is set aside. In the result, this application stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
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