

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.51926 of 2013

Arising Out of PS.Case No. -9 Year- 2010 Thana -DARPA District-
EASTCHAMPARAN(MOTIHARI)

- =====
1. Bhola Shankar Sah S/O Late Ramchandra Sah Vill.- Siswaniya, P.S.- Darpa, Dist.- East Champaran
 2. Vinod Prasad Sah @ Binod Sah S/O Basudeo Sah Vill.- Siswaniya, P.S.- Darpa, Dist.- East Champaran

... Petitioner/s
Versus
The State Of Bihar Opposite Party/s
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Appearance :

For the Petitioner/s : Mr. Sangeet Deokuliar, Advocate
For the Opposite Party/s : Mr. Ram Anuran Singh, A.P.P.
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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
CAV JUDGMENT

Date: 24-08-2017

Heard learned counsel for the parties.

This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioner for quashing of an order dated 29.09.2012 passed by the learned Sub-Divisional Judicial Magistrate, Raxaul at Motihari, East Champaran in Darpa P.S. Case No. 09 of 2010, whereby the learned court below took cognizance against the petitioner under Sections 147, 148, 149, 323, 504 and 302 of the Indian Penal Code.

The brief facts of this case is that while the father of the informant was returning from his daughter's house, he was assaulted by the villagers of Siswaniya at the instance of Amiri Sah and Gopal Rai and he become unconscious. On information, the informant went there and took his father to home and got him treated and when his father regained his consciousness, he stated that Amiri Sah, Shiv Rai, Gopal Rai, Harilal Sah, Binod Sah and Guddu Sah have assaulted him and when the condition of his father



being deteriorated, he took him Sadar Hospital where he succumbed to his injuries and died.

Learned counsel for the petitioners has submitted that the petitioners are innocent and has not committed any offence. In fact, there is general and omnibus allegation against the petitioners and no specific overt act is attributed to them. As a matter of fact, there was a scuffle between Gopal Rai and Pannalal Rai regarding the cutting of crop one day prior to the alleged occurrence and on account of the said dispute, the entire occurrence took place. These petitioners have not played any role in the alleged occurrence. Moreover, no witnesses have supported the prosecution version but the learned Magistrate has taken cognizance against the petitioners without considering the aforesaid facts. On the above ground it is submitted that the cognizance order is bad in law and is fit to be quashed.

Learned counsel appearing for the State opposes the application by contending that there are allegations against the petitioners and the court below after going through the materials available on record has found a prima facie case made out against the petitioners and rightly taken cognizance for offence under Sections 147, 148, 149, 323, 504 and 302 of the Indian Penal Code. Therefore, the order taking cognizance does not require any interference.

From perusal of the material 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 petitioners. All the submissions made at Bar relates to disputed question 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 ground to proceed with the matter is required. At this stage, only prima facie case is to be seen in the light of the law laid down by the 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 Pharmaceutical 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 submission made by the learned counsel for the petitioner call for adjudication on pure question 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 defense of the accused cannot be considered at this stage. Moreover, the petitioners have got a right of discharge through a proper application for the said purpose and he is free to take all the submission 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)

Brajesh/-

AFR/NAFR	NAFR
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