

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.35473 of 2014

Arising Out of PS.Case No. -1018 Year- 2011 Thana -PATNA COMPLAINT CASE District-
PATNA

- =====
1. Dr. Kumar Indradeo @ Kumar Indradeo Yadav son of late Ram Prit Singh, resident of Missi Kutir, Road No. 12, House No. 17/E, Mohalla-Rajendra Nagar, P.S. Kadamkuan, District-Patna.
 2. Kumar Gyanendra @ Gyanendra Kumar Yadav, son of Dr. Kumar Indradeo @ Kumar Indradeo Yadav, resident of Missi Kutir, Road No. 12, House No. 17/E, Mohalla-Rajendra Nagar, P.S.-Kadamkuan, District-Patna.

.... Petitioner/s

Versus

1. State of Bihar
2. Sharda Devi, wife of Sri Kailash Singh, resident of village Ramjeechak, P.S. Digha, P.O. Bataganj, district-Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Dhananjay Kumar Advocate

For the Opposite Party/s : Mr. Shailendra Kumar No.1(App)

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL ORDER

5 25-08-2017 Heard the parties.

The present petition under Section 482 of the Code of Criminal Procedure has been filed for setting aside the order taking cognizance dated 24.08.2011 passed by the Judicial Magistrate, Ist Class, Civil Court, Patna, in Complaint Case No. 1018 (C) of 2011 by which cognizance has been taken under Sections 147, 447, 323 and 379 of the Indian Penal Code (hereinafter referred to as 'IPC').

Briefly stated fact of the case is that on 14.04.2011 at about 10 A.M. pillar was constructed by the complainant on her land and at the same time the accused persons, namely, Gyanendra



Kumar and Kumar Indradeo and three unknown persons came armed with deadly weapons and asked complainant to stop the work. When complainant protested, Kumar Indradeo ordered to kill her and thereupon all the accused persons assaulted her and outraged her modesty. The further allegation is snatching of gold chain and Rs. 30,000/- cash and also taking away some articles from them. On the basis of the said allegation the Complaint Case No. 1018 (C) 2011 dated 15.04. 2011 under Sections 147, 447, 323 and 379 of the IPC was filed by the petitioner before the CJM, Patna.

The complainant was examined before the court on Solemn Affirmation and in support of her Complaint Case three witnesses were also examined by the court below. On the basis of deposition of complainant and witnesses examined by the court below and other materials available on record, the court found prima facie case made out against the petitioners and took cognizance under Section 147, 447, 323 and 379 of the Indian Penal Code and issue summons to the petitioners to appear in the court and to face trial. The present petition has been filed challenging the said order of taking cognizance by the court below.

It has been contended on behalf of the petitioners that



petitioners have committed no offence. The present case arises out of the land dispute and is a counter blast of the case filed by the petitioners on 28.10.2009. There is bonafide boundary dispute between the parties and the dispute is basically of civil nature and as such, no criminal offence is made out. It has further been contended that there is no material against the petitioners, as such, the order taking cognizance is not sustainable. At the stage of taking cognizance the court below has to form opinion regarding prima facie case made out against the accused and no detailed discussion is required at that stage. The defence of the petitioners cannot be examined at this stage and same could be examined at the subsequent stage of the proceeding. When the Magistrate has taken cognizance of an offence, the power of High Court to interfere is only to a limited extent. The High Court cannot substitute its view for the summoning order passed by the Magistrate while exercising inherent jurisdiction under Section 482 of the Code of Criminal Procedure. It is not for the High Court to appreciate the evidence and its truthfulness or its sufficiency as same is the function of trial court.

After hearing both the parties and on perusal of the order impugned and other materials on record, I am not inclined to interfere with the order impugned passed by the court below.



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However, petitioner may raise issues raised in this petition and all other issues permissible in law at the time of framing of charge.

Petition stands dismissed.

(S. Kumar, J)

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