

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.52519 of 2013

Arising Out of PS.Case No. -159 Year- 2012 Thana -BUXAR COMPLAINT CASE District-
BUXAR

=====

1. Mohammad Akbar Son Of Late Hafiz Mian R/O Village - Dumari,
Police Station - Simari, District - Buxar

2. Sahajahan Masterson Son Of Late Hafiz Mian R/O Village - Dumari,
Police Station - Simari, District - Buxar

3. Mohammad Jainul Son Of Late Hafiz Mian R/O Village - Dumari,
Police Station - Simari, District - Buxar

4. Mohammad Rahman Son Of Ali Akbar R/O Village - Dumari, Police
Station - Simari, District - Buxar

5. Sarfun Khatoon Daughter Of Late Hafiz Mian R/O Village - Dumari,
Police Station - Simari, District - Buxar

.... Petitioner/s

Versus

1. The State Of Bihar

2. Mira Mian Son Of Late Pagamber Mian R/O Village - Dumari, Police
Station - Simari, District - Buxar

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Shivendra Kumar Sinha

For the Opposite Party/s : Mr. Jharkhandi Upadhyay (App)

=====

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

2 19-01-2017 Heard the parties.

The petitioners have filed the present application under
Section 482 of the Cr. P.C. for quashing of the order, dated
21.05.2013, passed by Sri. D. Kumar, learned Judicial Magistrate,
1st Class, Buxar in Complaint Case No. 159(C) of 2012 (Tr. No.
1848 of 2013) whereby and whereunder the learned Magistrate has
taken cognizance against the petitioners for the offences
punishable under Sections 147, 323, 341, 504 and 379 of the



Indian Penal Code.

The prosecution case in short is that the complainant on the alleged date of occurrence was cleaning his drain, when accused persons assembled there with variously armed and started abusing the complainant and one other and on protest they have assaulted the complainant and upon protest the accused persons assaulted the complainant by iron rod and further petitioner no. 4, namely, Rahman snatched golden chain from neck of one Sahyara Khatoon.

On the basis of the aforesaid, Complaint Case No. 159(C) of 2012 was registered and after enquiry, the learned Magistrate had found the *prima facie* case against the petitioners under Sections 147, 148, 149, 323, 324, 326, 517, 325/511 and 504 of the Indian Penal Code and, accordingly, vide order, dated 21.05.2013 passed in Complaint Case No. 159(C) of 2012 (Tr. No. 1848 of 2013), ordered for issuance of processes against these petitioners, which is under challenge in the present application.

It has been submitted on behalf of the petitioners that the petitioner no. 2 has lodged a case i.e. Simari P.S. Non F.I.R case No. 8 of 2012 against the complainant party for the same occurrence and police after investigation found the case true against the complainant side and the complainant only to save his



skin from the said case, has filed the present frivolous complaint case only to harass the petitioners. In support of his contention, he has referred to statement of one witnesses No. C.W. -3, who on a query of the Court, stated that only to save his skin from the case filed by petitioner no. 2, the present case has been filed. Learned counsel for the petitioners further submitted that this is out and out malicious and malafide prosecution initiated against the petitioner only with an intention to harass and humiliate them. However, the learned Magistrate ignoring these facts, has ordered for issuance of processes vide impugned order and that too in a very mechanical manner, which is fit to be quashed.

Learned counsel appearing on behalf of the State has opposed the application and submitted that learned Magistrate after careful consideration of the evidences collected during the course of investigation and materials available on record, has found *prima facie* case and accordingly ordered for issuance of processes and as such there is no illegality in the impugned order.

Having heard both sides, from perusal of the record, it appears from the complaint petition as well as the materials collected during the course of enquiry show *prima facie* case against these petitioners. No doubt in the present case counter case has been filed by petitioner no. 2, which is available on record but



this is not a stage to look into those documents. So far the contention of the petitioner that one of the witnesses of the complainant has submitted that the complaint only to save his skin from the case filed by the petitioner has filed the present complaint case, the said submission of learned counsel for the petitioner cannot be considered as the complainant has nowhere admitted this fact and other witnesses had also not stated so. Apart from that there are consistent evidence with respect assault and other ingredients under Sections 147, 323, 341, 504 and 379 of I.P.C., are also available on record.

In view of the above, I do not find any infirmity either legal or factual in the order, dated 21.05.2013, passed by Sri. D. Kumar, learned Judicial Magistrate, 1st Class, Buxar in Complaint Case No. 159(C) of 2012 (Tr. No. 1848 of 2013).

Hence, I find not merit in the present application, which is hereby dismissed.

(Vinod Kumar Sinha, J)

sunil/-

U			
---	--	--	--

