

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.10470 of 2012

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1. Ram Chandra Singh, Son of Late Raghunandan Singh.
 2. Sujeet Singh, Son of Ram Chandra Singh.
Both residents of Village Kurma, P.S. Nawada, District Nawada.
 3. Ajay Singh, Son of Ram Bilash Singh.
 4. Sanjay Singh, Son of Late Rajendra Singh.
Both residents of Village Kako Bigha Maghara, P.S. Dip Nagar, District Nalanda (Bihar).

.... Petitioners

Versus

1. The State of Bihar.
2. Kiran Devi, Wife of Tega Singh, resident of Village Shiv Nagar Nokharpar, Gonawa, P.O. Gonawa, P.S. Nawada, District Nawada.

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Chandrasen Prasad Sinha, Advocate
For the State : Mr. Ajay Kumar No.I, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR
ORAL JUDGMENT

Date: 17-05-2017

The quashing petition filed under Section 482 Cr.P.C. has been preferred against order dated 05.11.2011, passed by learned Judicial Magistrate, 1st Class, Nawada in Protest cum Complaint Case No.336 of 2009/993 of 2010 whereby cognizance has been taken under Sections 323 and 347 of IPC against the accused persons, who are petitioners in the present petition.

2. Brief facts giving rise to this case is that Kiran Devi, opposite party no.2, had earlier filed a complaint case bearing Complaint Case No.198 of 2009 against the petitioners in the court of Chief Judicial Magistrate, Nawada. It was sent for lodging FIR to police under Section 156(3) Cr.P.C., accordingly, Nawada Town P.S. Case No.336 of 2009, dated 08.09.2009 was registered under Sections 364/323/504/34 of IPC



against all petitioners. The police commenced investigation thereafter finding the accusation false submitted final form. On the instant protest petition the same being treated as a complaint case, the learned Magistrate proceeded for enquiry thereafter cognizance has been taken only under Sections 323 and 347 of Indian Penal Code as no prima facie material on record was found for taking cognizance against main allegation of kidnapping or abducting in order to murder i.e. under Section 364 of IPC.

3. Learned counsel appearing on behalf of the petitioners first points out that this case was maliciously instituted in background that father of petitioner no.3 Ram Bilash Singh had lodged Nawada P.S. Case No.356 of 2007 under Sections 304(B)/34 of IPC against the complainant Kiran Devi, the mother-in-law of the sister of another petitioner, namely, Ajay Singh who was married with son of Kiran Devi, this case was lodged in the year 2007 and in Sessions Trial No.210 of 2010 arising out of that the husband, son of Kiran Devi was convicted. So while the case was going on against them, they lodged this malicious prosecution in order to put pressure to the petitioners to compromise the case. Falsity of the case also evident from the result of investigation done by the police as the accusation levelled against the petitioners-accused was found false. Thereafter on the basis of protest petition, at the enquiry stage, only interested witnesses' statements were recorded and cognizance has been taken under Sections 323 and 347 of IPC.

4. The learned Additional Public Prosecutor submits that cognizance has rightly been taken considering the material available on



record.

5. Having considered the rival submissions and on perusal of materials on record, the statement of the witnesses during the enquiry stage is that the son of Kiran Devi was kidnapped by the accused persons and kept in confinement for a period of one year thereafter returned back safely. At the enquiry stage only one independent witness was examined but he failed to disclose date of occurrence. Moreover earlier the police case lodged in the matter by opposite party no.2 the police investigated thoroughly finding the case false submitted final report. The instant case appears to have been lodged by opposite party no.2 herself, one of the accused, under Section 304(B) of IPC for killing the sister of petitioner no.3 Ajay Singh so the present case undoubtedly appears malicious in nature filed by opposite party no.2 in order to take vengeance against petitioners who had filed a case of dowry death against opposite party no.2 and his son, so continuation of the instant criminal proceeding against the petitioners would be abuse of the process of the court.

6. In the result, the instant criminal proceeding in the court below is set aside.

7. This quashing petition is allowed.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
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