

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.155 of 2013

Arising Out of PS.Case No. -1952 Year- 2010 Thana -PATNA COMPLAINT CASE District- -

1. Jai Prakash S/O Late Chandeshwar Singh Resident Of Village- Arap, P.S- Bikram, District- Patna, At Present Residing At Patel Nagar, Guru Sahay Lal Colony, P.S- Shastrinagar, District- Patna.
2. Ashish Kumar @ Ashish S/O Jai Prakash Resident Of Village- Arap, P.S- Bikram, District- Patna, At Present Residing At Patel Nagar, Guru Sahay Lal Colony, P.S- Shastrinagar, District- Patna.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Gautam Kumar S/O Om Prakash Resident Of Village- Arap, P.S- Bikram, District- Patna, At Present Resident Of Mohalla- Sheikhpura, P.S- Shastrinagar, District- Patna.

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Praveen Kumar

For the Opposite Party/s Mr. Sanjay Kumar Ghosavrey

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 20-04-2017

Heard the counsel for the petitioners and the complainant/opposite party no.2.

2. The present application is filed under section 482 of the Code of Criminal Procedure to quash the order dated 23.08.2010 passed by the learned Judicial Magistrate, 1st Class in Complaint Case No. 1952 (C) of 2010 whereby cognizance of the offence under section 323 IPC was taken and processes were issued on the petitioners to face the trial. From paragraph 3 of the complaint, it appears that both parties are closely related to each other. Accused no.1 is uncle and accused no.2 is cousin brother of the complainant.

3. Briefly stated the prosecution case is that the ancestral house at village Arap in the district of Patna belongs to both the accused persons and the



complainant. On 11.07.2010, the complainant had gone to his ancestral house to see his orchard but found no mangoes in the trees. He learned that all the mangoes were plucked and taken away by the accused persons. While he was on way back to Patna, he noticed the accuseds also coming on the road. When a query was made about plucking of the mangoes, the accused persons abused and one of them namely petitioner no.2 caught his neck. Other accused persons committed theft of Rs. 820/-.

4. It has been submitted that the present petitioners had also lodged a case against the present complainant and others vide Complaint case No. 3402 (C) of 2009 in which cognizance of the offence was taken by the learned court below. Challenging the said order taking cognizance passed against the opposite parties, three applications under section 482 Cr. P.C. were filed. All the three applications were considered and disposed of by a common order dated 18.04.2015 wherein this Court, considering the particular facts of the case, set aside the order taking cognizance without prejudice to the rights of the parties. A web copy of the said order has been furnished by the counsel for the petitioner which is taken on record and marked 'Y' for identification. This Court while quashing the order taking cognizance against the present complainant in the said order observed as under:-

“Be that as it may, considering the relationship between the parties and nature of allegation the application is allowed and the order of cognizance dated 13.07.2010 passed by the Judicial Magistrate 1st Class, Patna in Case No. 3402C of 2009 also in their interest Complaint Case No. 155 of 2010 instituted by Gautam Kumar, are hereby set aside without prejudice to the rights of the parties.”

5. It is submitted on behalf of the petitioners that the complaint case number was incorrectly noted in the said order. In place of Complaint Case No.



1952 (C) of 2010, it was typed as Complaint Case No. 155 of 2010.

6. The counsel for the complainant has not disputed the aforesaid contention of the petitioners.

7. Considering the aforesaid facts, this Court records that in the light of aforesaid order dated 18.04.2015 the order taking cognizance in Complaint Case No. 1952 (C) of 2010 is already quashed.

8. The application stands allowed.

(Kishore Kumar Mandal, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	25.04.17
Transmission Date	25.04.17

