

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No. 49800 of 2013

Arising out of P.S. Case No. - 1293 Year - 2012 Thana - ROHTAS COMPLAINT CASE District - SASARAM (ROHTAS)

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Ramsakal Singh @ Ram Sakal Yadav, Son of Late Tengari Singh, Resident of Village - Sonoura, P.S. - Tilauthu, Dist. - Rohtas

.... Petitioner

Versus

1. The State of Bihar
2. Jagroop Singh, Son of Late Tengari Singh, Resident of Sonoura, P.S. - Tilauthu, Dist. - Rohtas

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Siddharth Harsh, Advocate

For the Opposite Parties : Mr. Jharkhandi Upadhyay, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 17-01-2017

Heard learned counsel for the petitioner as well as learned counsel for the State and Opposite Party No. 2.

2. This is an application for quashing the order dated 13.06.2013 passed in Complaint Case No. 1293 of 2012 corresponding to Trial No. 2553 of 2013 whereby the learned court below has issued process of summons against the petitioner to face trial for offence under Section 323 and 341 of the Indian Penal Code.

3. Opposite Party No. 2 Jagroop Singh filed Complaint Case No. 1293 of 2012 against the petitioner Ramsakal Singh @ Ram Sakal Yadav and his wife Lalita Devi for the offences under Sections 323, 341, 406, 420, 467 and 468 of the Indian Penal Code.

4. After inquiry, the learned court below issued



summons only against the petitioner to face trial for offences under Section 323 and 341 of the Indian Penal Code only. No material was found against Lalita Devi. The aforesaid order was passed on 13.06.2013 in Complaint Case No. 1293 of 2012.

5. The petitioner has challenged the aforesaid order on the ground that there is no whisper of commission of any offence of hurt or wrongful restraint in the complaint petition, hence, the impugned order suffers from non-application of judicial mind and criminal prosecution of the petitioner is bad in law.

6. On the other hand, learned counsel for the Opposite Party No. 2 submits that Opposite Party No. 2 challenged the aforesaid cognizance order before the learned Sessions Judge, Sasaram in Cr. Revision No. 158 of 2013, as the Opposite Party No. 2 was aggrieved by non-cognizance for offences under Sections 406, 420, 467 and 468 of the Indian Penal Code. The learned Sessions Judge, Sasaram by order dated 18.10.2013 allowed the criminal revision with following observation "I have also perused the records and the materials available on the record. I find that the learned court below should have considered the material available on the record properly and then to pass the order, in accordance with law. The revisionist may produce the material before the learned court below, if any, in support of the case. In the result, the criminal revision is



allowed.” The aforesaid order was not challenged anywhere and got finality.

7. There is no dispute that the order of the revisional court would take its own effect. However, since no offence under Section 323 and 341 of the Indian Penal Code is, at all, disclosed in the complaint petition, the criminal proceeding against the petitioner for offence under Section 341 and 323 of the Indian Penal Code is not sustainable in law. Hence, the same is set aside and this application stands allowed.

(Birendra Kumar, J.)

Kundan

AFR/NAFR	
CAV DATE	
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