

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.30564 of 2011

Arising Out of PS. Case No. -2368 Year- 2010 Thana –Complaint Case District- SIWAN

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1. Surendra Upadhayay son of late Sitaram Upadhayay
 2. Nagendra Upadhayay son of late Byas Upadhayay
 3. Prince Upadhayay son of Surendra Upadhayay
All residents of village Dewapur, P.S. Barauli, District Gopalganj
 4. Harikishor Mishra son of late Hareshar Mishra
Resident of village Teliya, P.S. Basantpur, District Siwan
- Petitioners
- Versus
1. The State of Bihar
 2. Pintu Tiwary son of Prabhunath Tiwary
Resident of village Mathia, P.S. Basantpur, District Siwan
- Opposite Parties
- =====

Appearance :

For the Petitioners : Mr. Lakshmi Kant Tiwary, Advocate
For the State : APP
For O.P. No. 2 : Mr. Ajay Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 24-04-2017

Heard learned counsel for the petitioners, learned APP for the State as well as learned counsel for the opposite party no. 2.

2. The present petition has been filed for quashing the order dated 15.03.2011 passed by the learned Judicial Magistrate, Siwan taking cognizance against the petitioners in Complaint Case No. 2368 of 2010 / Tr. No. 6142 of 2011 for the offence under Sections 447, 448, 427, 323, 380, 504 and 506 of the Indian Penal Code.

3. According to the prosecution case, on 20.09.2010 the petitioners came on a jeep and unauthorizedly entered the house of the complainant and committed theft of ornaments, clothes and cash of Rs. 20,000/- and also took away the complainant's belongings.

4. Learned counsel for the petitioners submits that the



complaint against the petitioners is out and out mala fide. It is stated that the complainant is the son-in-law of petitioner no. 1 and accusations on the face of it are highly improbable that a person would enter with arms in the house of his son-in-law and commit theft and take away his daughter. As a matter of fact, there is case and counter case between the parties. There is inordinate delay in filing the complaint on 20.09.2010 for the alleged occurrence of 23.08.2010 which further casts doubt upon veracity of the accusation. A complaint had earlier been filed on 26.08.2010 in Complaint Case No. 2406 of 2010 by the daughter of petitioner no. 1 against the opposite party no. 2 and his family members which was subsequently converted into an FIR in Barauli P.S. Case No. 162 of 2010.

5. Mr. Ajay Mishra, learned counsel appearing on behalf of the opposite party no. 2, opposes the present petition by submitting that at the stage of taking cognizance, all that is required to be seen is whether there was a prima facie case before the learned Magistrate for taking cognizance of the offence. At this stage, the learned Magistrate was not required to go into the defence of the petitioners and hence there is no occasion for interference with the order taking cognizance.

6. Having heard learned counsel for the parties and on careful consideration of the materials on record, this Court finds merit in the petition. It is not in dispute that prior to the instant complaint, the daughter of the petitioner no. 1 had filed a complaint under section 498A and allied Sections of the Indian Penal Code and Section 3/4 of the



Dowry Prohibition Act against the opposite party no. 2 and his family members. The present complaint filed subsequently was clearly in retaliation to the earlier compliant and to put pressure upon the petitioners. The accusations in the complaint appear highly improbable and incapable of being believed by a prudent person that petitioner no. 1 along with other persons would go with arms and commit theft in the house of his son-in-law.

7. This Court, therefore, is of the view that continuance of criminal prosecution against the petitioners, in the facts and circumstances of the case, would amount to abuse of process of the court.

8. Accordingly, the impugned order dated 15.03.2011 passed by the learned Judicial Magistrate, Siwan taking cognizance against the petitioners in Complaint Case No. 2368 of 2010 / Tr. No. 6142 of 2011 for the offence under Sections 447, 448, 427, 323, 380, 504 and 506 of the Indian Penal Code is hereby quashed. The petition stands allowed.

9. Registry is directed to send back the lower court records without any delay.

(Vikash Jain, J)

B.T/-

AFR/NAFR	NAFR
CAV DATE	N.A
Uploading Date	27.04.2017
Transmission Date	27.04.2017

