

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.4630 of 2017

Arising Out of PS.Case No. -1729 Year- 2007 Thana -SAHARSA COMPLAINT CASE District-
SAHARSA

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1. Md. Mintullah Son of Late Md. Bajuddin Resident of Village-Devka
Tola-Satai P.S. Nauhatta, District-Saharsa.

.... Petitioner/s

Versus

1. The State of Bihar
2. Md. Isha Son of Md. Jholi, Resident of Village-Devka Tola-Satari, P.S.
Nauhatta District-saharsa.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Amarnath Jha

For the Opposite Party/s : Mr. Suresh Prasad Singh

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR
SINGH**
ORAL ORDER

2 19-05-2017

Heard learned counsel for the parties.

The present application has been filed for quashing the order dated 25.7.2016 passed by the learned Sessions Judge, Saharsa in Cr. Revision No. 72 of 2016 affirming the order dated 11.2.2016 passed by the learned ACJM II, Saharsa in Complaint Case No. 1729C of 2007 whereby the petitioner's application for discharge under section 245 of the Code of Criminal Procedure (hereinafter referred to as the 'Code') has been rejected. Hence, prayer has been made for quashing of both the orders passed by the learned ACJM as well as the learned Sessions Judge.



The prosecution case is that the accused persons earlier demanded extortion for which Sanaha was lodged. On receiving information of the said Sanaha being lodged, the accused persons got infuriated and they came variously armed and started cutting paddy crops of the complainant. On protest being made, the complainant was assaulted and the crops were robbed.

On the complaint being filed, the complainant was examined on solemn affirmation, statement of enquiry witnesses was recorded and considering the same, the process was directed to be issued after cognizance being taken under sections 323,341 and 420 IPC.

At the pre-charge level under section 244 of the Code, three witnesses were examined. The petitioner filed an application on 13.5.2015 for discharge. The rejoinder to discharge was filed on behalf of the complainant on 6.6.2015. The learned ACJM, Saharsa, after considering the evidence of three pre charge witnesses and hearing the prosecution and the defence, rejected the prayer for discharge. The aforesaid order refusing to discharge was challenged in Cr. Revision No. 71 of 2016 but the same was dismissed by the learned Sessions Judge upholding the order



of the learned ACJM. Hence, in the present application both the aforementioned orders are under challenge.

It is submitted by learned counsel for the petitioner that in a background of land dispute the accusation has been levelled. The complainant during his evidence at pre-charge level, has admitted that complaint petition bears the thumb impression of his brother in law (sala). Hence, it is absolutely a malicious prosecution.

In view of this court, for considering a discharge petition under section 245 of the Code, the Magistrate has to consider the evidence adduced at the stage of section 244 of the Code and has to record the reason that no case is made out which, if the evidence recorded at the pre-charge level goes un rebutted, would warrant his conviction. At the stage of considering the prayer for discharge under section 245 of the Code, the Court is not required to consider the defence of the accused. Since at the stage of pre-charge three witnesses have supported the case of the prosecution and the learned Magistrate has considered the same, more over, the order of the learned Magistrate has been upheld by the learned revisional court, this court finds no infirmity in the impugned orders.



This application is, accordingly, dismissed.

(Dinesh Kumar Singh, J)

Anil/-

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