

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.27805 of 2014

Arising Out of PS.Case No. -15 Year- 2012 Thana -BITHAN BAZAR District- SAMASTIPUR

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1. Satya Narayan Bharti S/o Late Musharu Yadav R/o Village- Wadauni, P.S- Bithan, District- Samastipur.
 2. Ram Nandan Yadav S/o Dhanik Lal Yadav R/o Village- Telni, P.S- Bithan, District- Samastipur. Petitioners.

Versus

1. The State of Bihar.
 2. Ram Naresh Yadav, son of Late Ram Kishun Yadav, village-Telni, P.S. Bithan, District Samastipur. Opposite Parties.
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Appearance :

For the Petitioners : Mr. Shiv Shankar Sharma, Adv.

For the Opposite Party No.2 : Mr. Krishna Prasad Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 24-07-2017

This petition under Section 482 of the Code of Criminal Procedure has been filed against the order dated 13.02.2014 passed in Tr. No.2904 of 2014, arising out of Bithan P.S. Case No.15 of 2012, by which the learned S.D.J.M., Rosera finding prima facie case against the petitioners, has taken cognizance under Sections 302/201/34 of the Indian Penal Code.

It has been submitted by learned counsel for the petitioners that after investigation the Investigating Officer submitted final form against the petitioners without finding their complicity in the occurrence but the learned S.D.J.M has taken cognizance against them by the impugned order without any evidence on record indicating the complicity of the petitioner in



the occurrence. He has further submitted that son of the informant, namely, Rajesh Yadav in his application dated 24.02.2012 give before the police has not named the petitioners in the occurrence. There is no material on record indicating the complicity of the petitioners in the occurrence and warranting taking cognizance against the petitioners.

On the other hand, learned counsel for the opposite party no.2 has vehemently opposed the aforesaid submission and submitted that there are sufficient material on record and in the case diary and perusing the same, the learned Magistrate has taken cognizance against the petitioners as well and there is no illegality and impropriety in the impugned order.

From perusal of the case records, it appears that Bithan P.S. Case No.15 of 2012 has been instituted under Sections 302/201/34 of the Indian Penal Code on the basis of the fardbeyan of one Ramdaresh Yadav with the allegation in succinct that on 10.02.2012 at about 7 PM his son, Rakesh Kumar aged about 14 years had gone to the house of one Ram Ujagar Yadav but did not regress to his house. Despite hectic search made by them they could not trace him out. Further allegation is that since the very date of occurrence the son of his agnate Ram Ujagar Yadav was also absconding from his house. He has claimed that on the said



date all the accused persons named in the fardbeyan including the petitioners committed the murder of his son and dumped his dead body in the river. After bulging of the dead body, it was exposed then it was identified as that of his son. Bone of contention is said to land dispute going on between the parties for the last one year.

Records further indicate that after investigation of the case the Investigating Officer has not submitted the charge-sheet against the petitioners and others rather a final form was submitted against them but the learned Magistrate on perusing the case diary and the material on record differing with the report of the police has taken cognizance of the offence under Sections 302/201/34 of the Indian Penal Code vide impugned order against the petitioners.

From perusal of the case diary, it appears that the informant in his further statement and witnesses in paragraphs- 6, 7 & 9 of the case diary have unanimously taken the name of the petitioners as well in the occurrence. Witness in paragraph-9 of the case diary has further stated that he had witnessed all the accused persons including the petitioners taking the son of the informant towards east. Thus, prima facie case under Section 302/201/34 of the Indian Penal Code is made out against the petitioners. Though the witnesses in paragraphs-24 & 25 of the



case diary had stated that petitioners have been falsely implicated in this case due to land dispute because Satya Narayan Bharti (petitioner no.1) did not execute the land in favour of the informant but the said witness appears to be defence witness of the case and their veracity & credential is required to be gauged during trial.

Considering the facts and circumstances of the case, I do not find any merit and substance in this petition. Accordingly it is dismissed.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	NAFR
CAV DATE	N/A
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