

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.31334 of 2014

Arising Out of PS.Case No. -436 Year- 2013 Thana -GAYA MUFFSIL District- GAYA

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Mahendra Sharma @ Mahendra Mistri Son of Nandey Sharma @ Nandey
Mistri resident of village - Akalbigha, P.S. Muffasil (Gaya), District -
Gaya

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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with

Criminal Miscellaneous No.31378 of 2014

Arising Out of PS.Case No. -436 Year- 2013 Thana -GAYA MUFFSIL District- GAYA

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Munna Mistri & Ors

.... Petitioner/sVersus

The State of Bihar

.... Opposite Party/s

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Appearance :

(In Cr.Misc. No.31334 of 2014)

For the Petitioner/s : Mr. Arvind Kumar Sharma

For the Opposite Party/s : Mr. Dr. Ravindra Kr.(App)

(In Cr.Misc. No.31378 of 2014)

For the Petitioner/s : Mr. Arvind Kumar Sharma

For the Opposite Party/s : Mr. Dr.Ravindra Kumar (App)

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL ORDER

31-07-2017 Both the aforesaid cases which arise out of one and the

same F.I.R. are being heard together and disposed of by this

common order.

2. In both Cr.Misc. No.31334/14 and Cr.Misc.

No.31378/14 respectively the petitioners have challenged the

common order dated 24.02.2014 passed by the Chief Judicial



Magistrate, Gaya, in Mufassil P.S. Case No.436/13 whereby he has taken cognizance for the offences under Sections 341, 323, 504 and 307/34 of the I.P.C. against the petitioners and other five co-accused persons.

3. The applications have been filed under Section 482 of the Code of Criminal Procedure for quashing the said cognizance order.

4. The facts stated, in brief, is that twenty days back the informant's son, namely, Ajit Kumar was playing cricket. During play Mahendra Mistry assaulted him badly. So, he was brought to Jai Prakash Narayan Hospital thereafter a panchayati was held in which all accused persons, namely, Munna Mistri, Sanjay Mistri, Satyendra Mistri, Guddu Mistri and Vijay Mistri participated and agreed to bear the entire expenses of medical treatment of the victim, but on 19.07.2013 again panchayti was held as demand of Rs.2,50,000/- was raised by way of expenses incurred on the treatment of the son of the informant which they refused to give, rather all accused person abused and assaulted the informant and threatened him to implicate her in a false case.

5. It is submitted by the learned counsel for the petitioners that falsity of the allegation appears from the fact that no date of occurrence is mentioned in the F.I.R., only it is said that



twenty days back the occurrence took place which comes to around of 29th- 30th of June,2013, but the medical report of the informant's son shows that medical prescriptions are dated 21.06.2013. Whereas in another Cr.Misc. No.31378/14 submission is that in the F.I.R. itself there is no allegation of assaulting informant's son against these petitioners, rather only allegation is that they participated in panchayati and agreed to bear cost of treatment of the son of the informant. So, if the entire allegation is taken to be true, as leveled out in the F.I.R. particularly against these petitioners are concerned, no prima facie case is made out.

6. Having considered rival submissions and gone through the record there is specific allegation against the petitioner, Mahendra Sharma @ Mahendra Mistri of Cr.Misc. No.31334/14 regarding badly assaulting the son of the informant during quarrel while playing cricket. The statements of the witnesses recorded during course of investigation by the police have supported the allegation. The police has submitted charge sheet in the matter. Only as no specific date of the occurrence is mentioned in the F.I.R. and there is delay in lodging F.I.R. only on these grounds criminal proceeding can not be quashed. There is no illegality with respect to taking cognizance of offence and issuing summons against Mahendra Mistri, so, his petition for quashing



the order taking cognizance is dismissed.

7. So far as the petitioners of Cr.Misc. No.31378/14 is concerned there are family members of Mahendra Mistri and there is no allegation against them with regard to assault on the person of the son of the informant. Only allegation against them is that they participated in the panchayati and despite agreement of compensating the informant incurred on the treatment of the informant's son, they did not honour their commitment. The allegation leveled against them do not constitute any prima facie offence, rather their implication in the case appear malicious in nature. So, the order issuing summons against them to stand the trial as well as entire criminal proceeding against the petitioners, Munna Mistri, Sanjay Mistri, Satyendra Mistri, Guddu Mistri and Bijay Kumar @ Bijay Mistri is set aside. So, Cr.Misc. No.31378/14 stands allowed.

(Arun Kumar, J)

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