

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.35450 of 2014

Arising Out of PS.Case No. -60 Year- 2013 Thana -SINGHIYA District- SAMASTIPUR

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1. Ram Narayan Paswan S/o Late Maksudan Paswan
 2. Chandani Devi W/o Ram Narayan Paswan Resident of village- Dasrath Dih, P.S.- Singhia, District- Samastipur
 3. Rama Kant Yadav S/o Nand Lal Yadav
 4. Nand Lal Yadav S/o Late Birchand Yadav @ Brichan Yadav Resident of village- Sonma, P.S.- Singhia, District- Samastipur

.... Petitioner/s

Versus

1. The State of Bihar
2. Raj Kumar Yadav S/o Late Pavitra Yadav Village- Sonma, P.S.- Singhia, District- Samastipur

.... Opposite Party/s

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Appearance:

For the Petitioner/s : Mr. Sunil Kumar Thakur, Advocate

For the Opposite Party/s : Mrs. Rita Verma(APP)

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL ORDER

3 31-07-2017 This petition under Section 482 Cr.P.C. has been filed against the order dated 15.6.2014 / 16.6.2014 passed by the S.D.J.M., Rosra, Samastipur in Singhiya P.S. Case No. 60 of 2013 corresponding Trial No. 3821 of 2014, whereby the learned Magistrate differing with the final form has taken cognizance of the offence under Sections 341, 323, 385, 379, 504/34 IPC and under Section 27 of the Arms Act against the petitioners.

2. Submission of learned counsel for the petitioners is that the property in question has been purchased by the petitioner Chandni Devi and Ramakant Yadav from its previous



owner, namely, Tahir Hussain, son of Sheikh Asgar Ali by two sale deeds dated 04.2.2005 and 10.1.2007, respectively and their names have been mutated on the aforesaid property and rent receipts are being issued in their names so the petitioners happen to be the owner of the aforesaid property and the wheat crop was cultivated by them on the said land so no question of cultivation of the said crop by the opposite party no. 2 and also demanding extortion in lieu of harvesting the crops by him and assaulting the opposite party no. 2 for the same at the hands of the petitioners arises. Moreover, the Police after investigation of the case and finding the case untrue have submitted final form against them. Hence no prima facie case is made out against the petitioners under the aforesaid sections. But the learned Magistrate has taken cognizance against the petitioners without assigning any reason of differing with the final form. Hence the impugned order is nothing but abuse of the process of the Court which is liable to be quashed.

3. No one turned up on behalf of the opposite party no. 2 to advance argument in the case despite putting his appearance in the case and filing Vakalatnama.

4. On perusal of the records, it appears that Singhiya P.S. Case No. 60 of 2013 has been instituted under sections 341,



323, 385, 379, 504/34 IPC and Section 27 of the Arms Act against the petitioners on the basis of complaint petition filed by the opposite party no. 2 with allegation that the opposite party no. 2 has cultivated wheat crop on his land but the petitioners were harvesting the same illegally and upon protest, the petitioner Ram Narayan Yadav demanded extortion of Rs. 5,000/- and on raising protest, all the petitioners assaulted him by means of fists and lathi and pointing the pistol they took away wheat crop amounting to Rs. 15,000/-, felling the same. After investigation of the said case the Police submitted final form against the petitioners finding the case untrue but differing with the aforesaid final form, the learned Magistrate took cognizance of the offence against the petitioners vide the impugned order.

5. On perusal of the documents filed by the petitioners vide different Annexures, it appears that the property in question has been purchased by the petitioner Chandni Devi and Ramakant Yadav vide two sale deeds dated 04.2.2005 and 10.1.2007, respectively from its previous owner, namely, Tahir Hussain, son of Sheikh Asgar Ali and name of the aforesaid petitioners have been mutated over the said land and rent receipts are being issued in their name. The said land was purchased long back in the year 2007 and the occurrence is said to be of 19.4.2013, so it prima



facie appears that the crops cultivated on the said land is not of the opposite party no. 2 rather of the petitioners. Hence no question of harvesting the aforesaid crop illegally by the petitioners and demanding extortion, thrashing the petitioners and finally taking away the crop by them arises. The learned court below has also not mentioned the reason for differing with the final form while taking cognizance, which is required to be mentioned by it once it differs with the final form submitted by the Police.

6. Under the aforesaid facts and circumstances, I find that the impugned order passed by the learned court below is fit to be set aside and continuance of the proceedings against the petitioners is nothing but sheer abuse of the process of the Court.

7. Accordingly, this petition is allowed and the impugned order dated 15.6.2014 / 16.6.2014, is quashed.

(Prakash Chandra Jaiswal, J)

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