

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.35763 of 2011

Arising Out of Complaint Case No. -101 Year- 2011 Thana -Hathuri District- SAMASTIPUR

=====

1. Madneshwar Jha, S/o Late Jagdish Jha
2. Deo Chandra Jha, S/o Sri Bachchu Jha
3. Udai Kant Choudhary, S/o Late Dashrath Choudhary
All resident of Village - Chhatauni, P.S.- Hathauri, Distt. - Samastipur
..... Petitioners

Versus

1. The State of Bihar
2. Raman Jee Jha S/o Shri Tara Kant Jha R/o Village - Chhatauni, P.S.- Hathauri,
District - Samastipur
..... Opposite Parties

=====

Appearance :

For the Petitioner/s : Mr. Ashok Kumar Mishra, Advocate
Mr. Amit Kumar Mishra, Advocate
For the Opposite Party no.2 : Mr. Raghwanand, Advocate
Mr. Rajan, Advocate
For the State : Mr. Ram Bachan Singh, APP

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 30-11-2017

Heard learned counsel for the petitioners and learned
counsel for the complainant-opposite party no.2.

2. This application under Section 482 of the Code of
Criminal Procedure (for short 'Cr. P.C.') has been filed by the
petitioners for quashing the order dated 25.05.2011 passed by the
learned Judicial Magistrate-1st Class, Rosera, Samastipur in
complaint case vide C.R. No.101 of 2011 whereby the petitioners
have been summoned to face trial for the offences punishable under
Section 435 of the Indian Penal Code.



3. Initially, the opposite party no.2 submitted written information to the Officer Incharge, Shivajee Nagar on 22.07.2009 to the effect that on 21.07.2009 at about 2:00 p.m., on 21.07.2009, while he was sleeping, he woke up on hearing noise that fire had broken. He saw that fire had broken in the room of his *khalihan*, as a result of which, husk, seeds of wheat etc. kept in the room were burnt to ashes. He saw the petitioners running away towards northern direction. The informant suspected that the petitioners might have set the room of his *khalihan* on fire.

4. Learned counsel for the petitioners submitted that on completion of investigation the police submitted their report under Section 173(2) of the Cr. P.C. holding the case to be true but without any clue. The petitioners were found innocent during investigation and were not sent up for trial. According to him, though the final police report was submitted on 31.01.2010, the matter was kept pending by the learned Magistrate for almost an year and on 14.12.2010, in the said police case, a petition in the form of protest was filed by the informant of the case. Having seen the materials available on record, the learned Magistrate accepted the report submitted by the police and directed the protest petition to be registered as a separate complaint pursuant to which complaint case vide C.R. No.101 of 2011, was registered against the petitioners. In



the said complaint case, the story narrated in the police case was reiterated by the complainant. He submitted that five witnesses, who were examined in course of inquiry under Section 202 of the Cr. P.C., improved the case of the complainant by stating in their deposition that the petitioners were seen setting the room of the *khalihan* of the complainant on fire. He submitted that no reliance can be placed on the statement of the witnesses, who supported the case of the complainant by improving the same in material particulars after lapse of a long period from the date of institution of F.I.R. He submitted that the learned Judicial Magistrate also mechanically passed the impugned order summoning the petitioners without considering the fact that if there were several eye witnesses to the occurrence as to why the complainant did not state so before the police while submitting his written report. He submitted that due to enmity existing from before the complainant has maliciously prosecuted the petitioners in the present complaint case.

5. On the other hand, learned counsel appearing for the complainant-opposite party no.2 submits that there is no error in the order passed by the learned Magistrate whereby the petitioners have been summoned to face trial. He submitted that the complainant and the witnesses examined in course of inquiry have fully corroborated the allegations made in the complaint. He



contended that the defence of the petitioners is not to be looked into at this stage. According to him, the defence taken by the accused persons can only be appreciated during trial of the case and not before for the purposes of quashing the summoning order.

6. I have heard learned counsel for the parties and perused the record.

7. It is not disputed that for the self-same occurrence initially an FIR was instituted in which the complainant had only raised suspicion against the petitioners that they might be instrumental in setting the room of the *khalihan* of the informant on fire. The police case was duly investigated upon and the statements of witnesses were recorded under Section 161 of the Cr. P.C. The witnesses examined in course of investigation did not support the allegation made by the informant to the extent of involvement of the petitioners in the alleged occurrence. Thus, finding no cogent materials against the petitioners, the police submitted their report under Section 173(2) of the Cr. P.C. in the court holding the petitioners to be innocent. From perusal of the police report, it would be manifest that the investigating officer has categorically stated that no witnesses came forward during investigation to contend that the petitioners were seen setting the *khalihan* or room of the complainant on fire.



8. The investigating officer recorded that in course of investigation and supervision of the case, it came to light that prior to the alleged incident, the parties were on litigating terms and in respect of the dispute existing between them, two cases, vide Hathuri (Shivajee Nagar) P.S. Case No.40 of 2009 and 41 of 2009, were instituted between the parties.

9. It would be manifest that after more than eleven months of the submission of the final report, a petition in the form of protest, was filed by the informant alleging involvement of the petitioners in the alleged incident. The learned Magistrate after looking into the materials available on record did not find even a prima facie case against the petitioners and, thus, accepted the police report and directed the petition filed in the form of protest to be separately registered as complaint.

10. It would further be manifest from the record that in course of inquiry conducted under Section 202 of the Cr. P.C., the witnesses examined on behalf of the complainant materially improved the case of the complainant by making specific allegation against the petitioners that they were seen setting the *khalihan* of the complainant on fire.

11. Learned counsel for the petitioners has rightly submitted that had there been so many persons present at the time



the fire had broken out the complainant ought to have filed the first information report alleging that the petitioners were seen setting the *khalihan* of the informant on fire specially when the written report was filed by the informant in the police station one day after the alleged incident had taken place. The informant had, thus, enough time to consult witnesses before lodging the F.I.R.

12. Having regard to the facts noted above, I am of the opinion that the instant complaint has been maliciously filed against the petitioners in order to spite them due to private and personal grudges. Hence, in order to secure the ends of justice, I am of the considered opinion that the further proceedings in connection with the aforesaid complaint be not allowed to continue.

13. In that view of the matter, the impugned order dated 25.05.2011 passed by the learned Judicial Magistrate-1st Class, Rosera, Samastipur, in complaint case vide C.R. No.101 of 2011, is hereby quashed.

14. The application stands allowed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.12.2017
Transmission Date	06.12.2017

