

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.34492 of 2011

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1. Chinta Devi Wife Of Shyama Choudhary Resident Of Village- Amiyawar, Police Station- Nasriganj, District- Rohtas,Sasaram At Present Mohania(Dahawa),Police Station- Mohania, District- Kaimur
 2. Shyama Chaudhary Son Of Late Dukhaharan Choudhary Resident Of Village- Amiyawar, Police Station- Nasriganj, District- Rohtas,Sasaram At Present Mohania(Dahawa),Police Station- Mohania, District- Kaimur
 3. Binda Devi Wife Of Ramraj Choudhary Resident Of Village- Fakarabad, Police Station- Kudra, District- Kaimur At Present Mohania(Dahawa), Police Station- Mohania, District- Kaimur
 4. Ramraj Choudhary Son Of Late Balkeshwar Choudhary Resident Of Village- Fakarabad, Police Station- Kudra, District- Kaimur At Present Mohania(Dahawa), Police Station- Mohania, District- Kaimur

.... Petitioners

Versus

1. The State Of Bihar
2. Laxuman Mallah Son Of Late Saraju Choudhary Resident Of Village- Bhagwanpur, District- Kaimur(Bhabua)

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Rajesh Kumar Pathak
 For the Opposite Parties : Mr. Atul Chandra (APP)

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL ORDER

7 07-09-2017 This Criminal Miscellaneous has been filed for quashing the order dated 29.06.2011 passed in Complaint Case No. 836 of 2009 by Sri S.K. Choubey, the then Judicial Magistrate, 1st Class, Bhabua (Kaimur), whereby and whereunder, after finding prima-facie case to be made out against the accused persons (petitioners) under section 364 of the I.P.C. they have been ordered to be summoned.

2. The opposite party no.2, namely, Laxuman Mallah



filed the aforesaid complaint case before the learned Chief Judicial Magistrate, Bhabua on 14.07.2009, stating interalia therein, that the maternal grand father's house of the father of the complainant is at Dadawa Mallah Toli Mohania and Late Bala Choudhary and Late Suresh Choudhary were his maternal uncles. Bala Choudhary was issueless and Suresh Choudhary has two daughters, namely, Binda Devi and Chinta Devi. Saryu Choudhary, the father of the complainant was living with Bala Choudhary since the childhood as his son. After death of Bala Choudhary he became successor of Bala Choudhary and came in possession over his share. The father of the complainant was living jointly with the daughters of Suresh Choudhary. The father of the complainant has kept his sons and sons's wife at Mohania. The complainant and his wife had gone to his village- Bhagwanpur before two days of the occurrence and he knew from the witnesses that his father was taken away on a cot by the accused persons towards east of the railway station and when the witnesses enquired about then all the petitioners told that Saryu Choudhary is ill and after some distance they got down him and kept on the railway track, thereafter witness Ram Lal Mallah cried and then they took away Saryu Choudhary on the G.T. Road and fled away by a jeep and then the complainant reached at Mohania with his brother and enquired about his father and met



with the petitioners and came to know that his father committed suicide on the railway track and they disposed of his dead body and when the complainant told them the facts as stated by Ram Lal Mallah then they became angry and told that do what you want. His claim is that the father of the complainant was killed by the accused persons and the dead body was also made traceless only with an intention to grab the land of his father.

3. The aforesaid complaint case was transferred in the court of Sri S.K. Choubey, Judicial Magistrate, 1st Class, Bhabua for enquiry and trial where the complainant was examined on the solemn affirmation and four enquiry witnesses have been examined and the learned Magistrate after considering the statement of the complainant on the solemn affirmation and the statements of the four enquiry witnesses passed the impugned order.

4. The petitioners being aggrieved and dissatisfied with the said order has preferred this Criminal Miscellaneous. The learned counsel for the petitioners submits that it is out and out a false case. Saryu Choudhary died natural death and he was aged about 70 years. Saryu Choudhary has tried to enter his name in the rent receipts which after enquiry by the Anchaladhikari was deleted. The rent receipts are being issued in the name of



petitioner nos. 1 and 3, vide Annexure-5 series, and as such the impugned order is fit to be set aside. The allegation is that Saryu Choudhary was killed and his dead body was made traceless by the petitioners, but cognizance has been taken under section 364 of the I.P.C which is quite contradictory and on this ground also the order of taking cognizance is bad and is fit to be set aside. There is no chit of paper to show that Saryu Choudhary possessed any land so the motive shown by the complainant is totally false. The dead body of Saryu Choudhary was cremated at Varanashi in presence of the complainant and others but thereafter only with a view to put pressure the complainant has lodged this false case. The enquiry witnesses during enquiry have given contradictory statements and there is nothing on the record to establish the offence under section 364 of the I.P.C. against the petitioners. The present case is apparently misuse of the criminal proceeding. In such type of serious cases there must be investigation by the police but only on the basis of the complaint petition and the statements of some of the interested witnesses cognizance has been taken and as such the same is fit to be set aside.

5. On the other hand, the learned A.P.P and the learned counsel for the opposite party no.2 submit that the learned Magistrate after considering the materials available on the record



which were collected during enquiry has passed the impugned order correctly which does not require any interference by this Court. At this stage the defence of the accused persons cannot be adjudged and it is only to be seen as to whether prima-facie offence is made out or not. The petitioners had taken away the father of the complainant on a cot and thereafter on a jeep and made him traceless. The dead body has not been recovered and as such the learned Magistrate has rightly found that prima-facie offence under section 364 of the I.P.C. is made out against the petitioners.

6. In the facts and circumstances stated above, considering that the complainant and the four enquiry witnesses during enquiry have supported the allegation as made out in the complaint petition and there is nothing on the record to show that the complainant have any motive to falsely implicate the petitioners and as such the impugned order appears proper, correct and legal and there is no need of any interference by this Court. At this stage the learned Magistrate is required only to see as to whether on the basis of the materials collected during enquiry prima-facie offence is made out or not. In the present case the learned Magistrate after considering the statement of the complainant on the solemn affirmation and the statements of the



four enquiry witnesses have come to the conclusion that prima-facie offence is made out under section 364 of the I.P.C. against the petitioners and as such has rightly passed the order. There is no need for any interference by this Court.

7. Accordingly, the impugned order is hereby confirmed and finding no merit in this Criminal Miscellaneous the same is hereby dismissed.

(Jitendra Mohan Sharma, J)

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