

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.43277 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- ARRARIA

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1. Bindeshwari Yadav Late Chichai Yadav Vill Raniganj Meghutola Ps Raniganj Araria
2. Maheshwari Yadav Basudeo Yadav Vill Raniganj Meghutola Ps Raniganj Araria
3. Kamleshwari Yadav Adhik Lal Yadav Vill Hasanpur Ps Raniganj Araria

.... Petitioner/s

Versus

1. The State Of Bihar
2. Basudeo Yadav Late Chichai Yadav Vill Raniganj Vantha Tola Ps Raniganj Araria

.... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Mukesh Kumar Rana, Adv.
For the State : Mr. Shailendra Kumar No. 1 APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT
Date: 02-11-2017

1. Heard learned counsel for petitioners and the State.
2. This petition has been filed for quashing the order dated 31-05-2011 passed in Complaint Case No. 3632C of 2010 by learned learned Chief Judicial Magistrate, Araria by which and whereunder, the learned Magistrate after inquiry u/S 202 of the Cr. P.C. has found prima facie case against the petitioners for the offence under Sections-468, 420, 120(B) of the Indian Penal Code.
3. Counsel for the petitioner has submitted that it is a matter of purely civil dispute. No criminal offence is made out. It has further been submitted that initially, the complaint was filed which



was sent to the concerned police station u/S 156(3) of the Cr.P.C. The police after investigation submitted final form as mistake of fact. Thereafter, on the basis of protest petition, the Magistrate proceeded u/S 202 of the Cr.P.C. and found prima facie case against all the petitioners by the impugned order.

4. In the complaint petition, there is allegation that accused petitioner No. 1 is full brother, petitioner No. 2 is son from the first wife of the complainant whereas petitioner No. 3 is his sister's son. It is alleged that these petitioners got decree in their favour on the basis of compromise petition filed in Title Suit No. 201 of 2004. The complainant has never put their signature over the aforesaid compromise petition.

5. Counsel for the petitioners has submitted that the complainant has challenged the aforesaid compromise decree by filing Misc. Judicial Case No. 16 of 2001 for setting aside the compromise decree and the same was dismissed with cost on 18-08-2000 by the court of Sub Judge-Ist, Araria. Xerox copy of the aforesaid order is annexed as Annexure-3 to the petition. Thereafter, the complainant/informant filed Civil Revision No. 1889 of 2004 against the order dated 18-08-2004 passed by the Sub Judge-Ist, Araria. The Civil Revision was also dismissed as withdrawn vide order dated 16-12-2004.



6. The police after investigation submitted final form as mistake of fact on 24-01-2010. The court below on the basis of protest -cum-complaint petition without proper appreciation of facts of the case has found prima facie case against these petitioners for the offence under Sections-468, 420, 120(B) of the Indian Penal Code by the impugned order.

7. Counsel for the opposite party No. 2 has appeared and submitted that there is no illegality in the impugned order. The learned APP has submitted that the impugned order is in accordance with law.

8. From the narration made in the complaint as mentioned by the complainant, it appears that compromise decree was passed by the court below in T.S. No. 201 of 2000. It is admitted fact that complainant has challenged the aforesaid compromise decree before the Sub Judge-Ist, Araria by filing Misc. Judicial Case No. 16 of 2001 and the same was dismissed on 18-08-2004. Thereafter, Civil Revision was filed by the complainant against the aforesaid order vide C.R. No. 1689 of 2004 which was also dismissed by order dated 16-12-2004.

9. In such circumstances, this court finds that no any criminal offence is made out against these petitioners on the basis of averments made in the complaint petition. The complainant has



already adopted the civil remedy for his grievances as stated above.

10. Therefore, the continuance of criminal prosecution against the petitioners in this case is mere harassment to the petitioners and an abuse of the process of court. Accordingly, this court finds that the impugned order is not in accordance with law.

11. In such circumstances, the impugned order dated 31-05-2011 passed in Complaint Case No. 3632C of 2010 along with entire criminal proceeding with respect to the petitioners is hereby quashed.

12. This Cr. Misc. Application is *allowed*.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	08-11-2017
Transmission Date	08-11-2017

