

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.15351 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- NALANDA (BIHARSHARIFF)

- =====
1. Jagdish Prasad son of Rambriksha Prasad
 2. Chandrika Prasad @ Tanik Prasad son of Rambriksha Prasad
 3. Achutanand Prasad @ Tunni Prasad son of Chandrika Prasad
 4. Adhherendu Sekhar @ Tanu Prasad son of Jagdish Prasad
 5. Sita Devi @ Fulki Devi wife of Jagdish Prasad

All residents of village-Sujanbigha, P.S.-Asthawan, District- Nalanda

.... Petitioner/s

Versus

- 1.The State of Bihar
2. Satola Devi wife of Nand Kishore Choudhary, resident of village-Sujanbigha,
P.S.-Asthawan, District- Nalanda

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Y.C.Verma, Sr. Advocate
Mr. Anuj Kumar, Advocate

For the Opposite Party No.2 : Mr. Rabindra Prasad Singh, Advocate

For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 07-11-2017

Heard learned counsel for the petitioners, learned counsel
for the opposite party no.2 and learned counsel for the State.

2. This application under Section 482 of the Code of Criminal Procedure (for short 'the CrPC') has been filed by the petitioners for quashing the order dated 10.12.2010 passed in Complaint Case No.874C of 2009 by the learned Sub Divisional Judicial Magistrate, Biharsharif, Nalanda whereby the petitioners have been summoned to face trial for the offences punishable under Sections 379, 323, 341 and 504 read with Section 34 of the Indian Penal Code (for short 'the IPC').



3. The complainant Satola Devi filed Complaint Case No.874C of 2009 alleging therein that on 17.07.2009 at 8 a.m. the complainant along with her family members started construction work of her house. In the meantime, the accused persons being variously armed with rifle and *Lathi* came there and started abusing the members of the prosecution party. On protest, they physically assaulted Surendra Choudhary with butt of rifle and *Lathi*. The complainant and her husband Nand Kishore Choudhary tried to save him on which the accused persons assaulted them also. The accused Bulki Devi repeatedly slapped Sabo Devi. On the point of rifle, the accused Tanik Prasad threatened that if any body would move, he would be killed. It is further alleged that the accused persons took away ten bags cement worth rupees three thousand and wife of the accused Jagdish Prasad took away two spades and four *Kathauti* worth rupees six hundred. They also threatened the prosecution party with dire consequences in case they would dare to lodge a case.

4. It would be manifest from the record that on 18.07.2009 the learned Chief Judicial Magistrate, Nalanda at Bihar Sharif made over the complaint case to the court of Sub Divisional Judicial Magistrate, Bihar Sharif, Nalanda under Section 192(1) of the CrPC for enquiry and trial.

5. The complainant was examined on solemn affirmation



and apart from the complainant, three witnesses, namely, Surendra Choudhary, Nand Kishore Choudhary and Sabo Devi were examined in course of enquiry conducted under Section 202 of the CrPC. After holding enquiry under Section 202 of the CrPC, the learned Magistrate summoned the petitioners in exercise of powers conferred under Section 204 of the CrPC vide impugned order dated 10.12.2010.

6. It is submitted by the learned counsel for the petitioners that the complaint launched against the petitioners is malicious one. The complainant is in habit of filing false cases against the petitioners. Earlier, she had filed S.C. /S.T. P.S. Case No. 08 of 2006 against petitioner nos.1 and 4 and other persons under Sections 341 and 323 of the IPC and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, which was found to be false and on completion of investigation, final report, as contained in Annexure-4 to the present application, was filed.

7. He submitted that owing to land dispute false cases are being instituted. Though there is allegation that the accused persons were variously armed with Lathi and rifle and they assaulted several persons, no corroborative medical evidence was brought on record in course of enquiry. He further contended that from the evidence of the witnesses recorded in course of enquiry also it would transpire that the



witnesses are not consistent.

8. On the other hand, learned counsel appearing for the complainant opposite party no.2 submitted that the allegations made in the complaint clearly attract ingredients of the offences under which cognizance has been taken and after holding enquiry, the learned Magistrate has rightly summoned the petitioners to face trial. He submitted that the witnesses are consistent and owing to the land dispute, the petitioners are regularly humiliating and harassing the complainant opposite party no.2, who belongs to weaker section of the society.

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

10. The fact that prior to the institution of the present compliant, the complainant had instituted a police case against some of the petitioners has not been disputed by the learned counsel appearing for the complainant. He has also not disputed that upon investigation the police found the allegations made in the police case to be false. On perusal of the complaint and the statement of the witnesses recorded in course of enquiry conducted under Section 202 of the CrPC, it would transpire that plot number or khata number of the land, on which construction work was going on, has also not been mentioned either in the complaint or during enquiry. Further, except



family members of complainant, no independent person has come forward to support the case of the complainant.

11. I find that in reply to court question Sabo Devi, Enquiry Witness No.3 clearly stated during enquiry that the case was lodged owing to land dispute. She also stated that no information was given to the police and complaint was directly filed in the court whereas in the complaint it is clearly stated that the complainant went to Asthawan Police Station to report about the occurrence and when no action was taken by police complaint has been lodged. Similarly, E.W.1 Surendra Choudhary stated in reply to court question that the case has been lodged because of land dispute and also in order to save himself from the case lodged by the accused persons against the complainant. Similar is the reply of E.W.2 Nand Kishor Choudhary.

12. Thus, it would be evident that the witnesses to the complainant have given a completely different picture of the entire episode. They clearly admitted that the case has been filed by the complainant to save himself from the case filed by the accused persons and also because of ongoing land dispute between the parties.

13. The learned Magistrate, while passing the impugned order has completely overlooked these relevant materials and mechanically summoned the petitioners to face trial.

14. In view of the discussions made above, I am of the



considered opinion that the complaint case lacks bona fide and is based on false averments. Allowing such a prosecution to continue would amount to flagrant abuse of process of the court.

15. Accordingly, the impugned order dated 10.12.2010 passed in Complaint Case No.874C of 2009 by the learned Sub Divisional Judicial Magistrate, Biharsharif, Nalanda and the entire criminal proceedings of the complaint case are quashed.

16. The application stands allowed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
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