

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.58281 of 2015

Arising Out of PS.Case No. -1830 Year- 2009 Thana -DARBHANGA COMPLAINT CASE
District- DARBHANGA

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1. Md. Mustaque S/o Late Md. Jaan
2. Md. Guddu S/o Md. Mustaque
3. Rubi Khatoon D/o Md. Mustaque
4. Anguri Khatoon D/o Umar Faruque
5. Ishrat Khatoon W/o Md. Israil
6. Sameena Khatoon W/o Md. Mustaque
7. Asgar Ali S/o Late Aamin Mistri
8. Hazara Khaton W/o Umar Khatoon
9. Anwar Ali S/o Late Ataur Rahman All are resident of Mohalla - Kotwali
Chowk, P.S.- Laheriasarai, District - Darbhanga

.... Petitioner/s

Versus

1. State of Bihar
2. Md. Jahangir S/o Late Ataur Rahman Resident of Mohalla - Kotwali Chowk,
Police Station - Laheriasarai, District - Darbhanga

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date: 15-05-2017

Heard learned counsel for the petitioners and the State.

The present application has been filed for quashing of the order dated 24.04.2015 passed by the learned 3rd Additional Sessions Judge, Darbhanga in Cr. Rev. No. 286 of 2014 and also for quashing the order dated 18.08.2010 passed by learned Judicial Magistrate, 1st Class, Darbhanga in Complaint Case No. 1830 of 2009 whereby process has been issued after cognizance being taken for offences punishable under Sections 323,341 and 379 IPC. The Revisional Court upheld the aforementioned order of learned Magistrate.

The prosecution case as per the complaint petition is that on 01.11.2009 at about 5.00 p.m. all the accused persons entered into the



‘Angan’ of the complainant and assaulted the complainant with legs, fists and slaps and also took away house hold articles. The occurrence took place in the background of dispute with regard to payment. Subsequently complainant was examined on S.A and statement of two enquiry witnesses were recorded.

On perusing the complaint - S.A. of the complainant and the statement of two enquiry witnesses, the learned Magistrate found prima facie case under Sections 323, 341 and 379 IPC.

It has been submitted on behalf of the petitioners that the accusation is omnibus and general and has been levelled in the background of land dispute.

Considering the fact that at the stage of exercising jurisdiction under section 190(1)(a) of the Code of Criminal Procedure the learned Magistrate has only to see that accusation constitutes prima facie case.

This is not the case of the petitioner that learned Magistrate has not applied his judicial mind while passing the impugned order. The order of issuance of process reflects that the learned Magistrate after going through the complaint of complainant and statement of enquiry witness directed for issuance of process. Moreover the Revisional Court has also not found any infirmity in the order impugned.

Above all at the stage of exercise of jurisdiction under Section 190 (1)(a) the Magistrate is not supposed to examine the



defence of the accused. A useful reference may have to the case of State of Orissa v. Debendra Nath Padhi reported in (2005) 1 SCC 568 paragraph no. 23 reads as under :

“23. As a result of the aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. Satish Mehra case holding that the trial court has powers to consider even materials which the accused may produce at the stage of Section 227 of the Code has not been correctly decided.”

Since the impugned order of taking cognizance is dated 18.08.2010 and there is nothing on record to suggest the present stage of the case, this Court is not inclined to interfere. Accordingly, this application is disposed of with liberty to the petitioner to raise all contentions at the appropriate stage of the proceeding.

(Dinesh Kumar Singh, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

