

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.564 of 2016

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

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1. Anil Tiwari, son of Umakant Tiwari, Resident of Village- Babnauli, P.S.- Vijayipur, District- Gopalganj.
 2. Usha Devi, Wife of Shailesh Nath Tiwari, Resident of Village- Chitakhali, P.S.- Guthani, District- Siwan.

.... Petitioner/s

Versus

1. The State of Bihar through Director General of Police, Government of Bihar, Patna.
2. The Superintendent of Police, Siwan.
3. The Sub Divisional Police Officer, Sadar, Siwan
4. The Investigation Officer of Darauli P.S. Case No. 10/2016, Darauli Police Station, District- Siwan.
5. Wakil Chauhan, Incharge Medical Officer, Primary Health Centre, Darauli, District- Siwan.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bikramdeo Singh, Advocate
Mr. Binod Kumar Sinha, Advocate
For the Respondent/s : Mr. Mukul Prasad, AC to G.P.18

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 30-11-2017

Heard learned counsel appearing for the parties.

2. This writ application has been preferred for quashing the F.I.R. of Darauli P.S. Case No.10 of 2016 registered under Sections 386/506 of the Indian Penal Code against the holder of the Mobile bearing No.7278189802.

3. Submission of the learned counsel for the petitioners is that the F.I.R. discloses no offence and during investigation it has



come in paragraph 18 of the case-diary that the petitioner is not the holder of the referred mobile from which threat was given to the informant rather someone residing in West Bengal is the holder of the said mobile. However, the petitioners have been dragged as an accused in the case.

4. According to F.I.R., the informant who is In-Charge Medical Officer of Primary Health Centre, Darauli in the district of Siwan, received the mobile call on 20.01.2016 at about 08:46 AM, while he was in his office. The caller threatened to be careful and also challenged that he would meet within two days.

5. Submission of the petitioners is that identity of the caller is itself doubtful. Moreover, the offence under Section 386 of the Indian Penal Code is not made out on perusal of the allegation as there is no allegation of extortion which is a primary ingredient for fulfilling the requirement of Section 386 of the Indian Penal Code. He further submits that the offence under Section 506 of the Indian Penal Code is also not made out because there is no ingredient of commission of criminal intimidation by the petitioners.

6. Learned counsel for the respondent submits that the offence under Section 353 of the Indian Penal Code would be applicable and if any offence is made out, it would be considered at the stage of charge as to for what offence charge should be framed.



7. To prove the offence under Section 353 of the Indian Penal Code, there must be allegation of commission of assault as defined in Section 351 of the Indian Penal Code or allegation of use of criminal force as defined in Section 350 of the Indian Penal Code.

8. There is no allegation of use of criminal force nor assault. Hence, the aforesaid offence is also not made out. Since, the F.I.R. discloses commission of no offence, in my view, the criminal prosecution of the petitioner would amount to an abuse of the process of the Court.

9. Accordingly, the aforesaid F.I.R. stands quashed and this writ application allowed.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.12.2017
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