

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.8259 of 2015

Arising Out of PS.Case No. -6 Year- 2013 Thana -SAHKUND District- BHAGALPUR

=====

1. Amulya Kumar Roy @ Amulya Roy S/o Sadanand Roy Resident of
Mohalla Mashakchak, Police Station Adampur, District Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Sadanand Prasad Advocate S/o Late Bhaskarani Prasad Resident of
Village Rampur, Police Station Nathnagar, District Bhagalpur.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Md. Najmul Hodda, Adv

For the Opposite Party/s : Mr. S.N.Shukla (App)

=====

**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR
SINGH**
ORAL ORDER

2 25-04-2017 Heard learned counsel for the petitioner and Mr.
J.N. Thakur, learned APP for the State.

The present application has been filed for
quashing the order dated 14.07.2014 passed by learned S.D.J.M.,
Bhagalpur in Shahkund P.S. Case No. 06 of 2013, whereby
process has been issued after taking cognizance of the offences
punishable under Sections 147, 148, 149, 379, 504 and 506 of the
Indian Penal Code.

The prosecution case in brief is that on 02.01.2013
the opposite party no. 2 filed a Complaint Case No. 11 of 2013
before the learned Chief Judicial Magistrate, Bhagalpur, with
accusation that complainant's father purchased 20 bighas of land



bearing Plot No. 9, Khesra Nos. 242, 244 (new) through registered sale deed in the year 1960 from late Sri Shaligram Prasad. It is alleged that in the background of land dispute the accused persons cut the paddy crops and made assault to the complainant. Ultimately the complaint case was transferred under Section 156(3) of the Cr.P.C to the police for investigation. Consequently, Shahkund P.S. Case No. 06 of 2013 was registered for the offences punishable under Sections 147, 148, 149, 379, 504 and 506 of the Indian Penal Code on conclusion of investigation the final form (chargesheet) was submitted under Sections 147, 148, 149, 379, 504 and 506 of the Indian Penal Code against the petitioner and others.

Learned counsel for the petitioner submits that the accusation has been levelled in the background of serious land dispute and pending litigations including title suit.

It appears from the impugned order that the learned Sub Divisional Judicial Magistrate after considering the materials collected during investigation, passed the impugned order. Hence, it cannot be said that the learned Magistrate has not applied his judicial mind while passing the impugned order.

In view of this Court at the stage of exercise of jurisdiction under Section 190(1)(b) of the Code of Criminal



Procedure, the court has to only see the prima facie case is made out. The case was registered in 2013 and the impugned order was passed on 14.07.2014.

Moreover, at the stage of exercising jurisdiction under Section 190(1)(b) of the Cr.P.C the Magistrate is not required to consider the defence of the accused. Useful reference may be made to the case of State of Orissa Vs. Devendra Nath Padhi (2005) 1 Supreme Court Cases 568. Paragraph 23 reads as follows:

“23. As a result of 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's case holding that the trial court has powers to consider even materials which accused may produce at the stage of Section 227 of the Code has not been correctly decided.”

In the circumstances, this application is disposed of with liberty to the petitioner to raise all the contentions at the appropriate stage of proceeding.

(Dinesh Kumar Singh, J)

Ranjan/-

U			
---	--	--	--

