

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.53031 of 2013

Arising Out of PS.Case No. -385 Year- 2012 Thana -NALANDA COMPLAINT CASE District-
NALANDA (BIHARSHARIFF)

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1. Dina Nath Ram Son Of Late Bhagirath Ram Resident Of Village - Dip Nagar,
P.S. Dip Nagar, District - Nalanda
2. Ajit Kumar Son Of Dina Nath Ram Resident Of Village - Dip Nagar, P.S. Dip
Nagar, District - Nalanda
3. Anup Kumar Son Of Dina Nath Ram Resident Of Village - Dip Nagar, P.S. Dip
Nagar, District - Nalanda
4. Gopal Kumar Son Of Dina Nath Ram Resident Of Village - Dip Nagar, P.S.
Dip Nagar, District - Nalanda

.... Petitioner/s

Versus

1. The State Of Bihar
2. Smt. Partima Devi Wife Of Shambhu Nath Chaurasia At And P.S. Dip Nagar,
District - Nalanda

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Raghwanand
For the Opposite Party/s : Mr. Najir Ansari

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

C.A.V. JUDGMENT

Date: 01-08-2017

Heard learned counsel for the parties.

Petitioner, by means of this application under section
482 of the Code of Criminal Procedure, have invoked the inherent
jurisdiction of this Court with prayer to quash the order dated
14.02.2013, passed by Smt. Rachna Srivastava, Judicial Magistrate,
1st Class, Biharsharif, Nalanda, in Case No. 385 C/12, whereby
cognizance has been taken against the petitioners for the offences
under sections 323, 504, 341/34 of the Indian Penal Code.

The contention of the learned counsel for the petitioner



is that no offence against the petitioner is disclosed and the present prosecution has been instituted with mala fide intention for the purposes of harassment. The present case has been lodged in retaliation of Dip Nagar P.S. Case No. 70 of 2012 (Annexure-2). The above case was lodged as the family members of the complainant assaulted the petitioners due to measurement of land being carried by the Circle Officer in light of the order of this Court dated 14.09.2011 passed in CWJC No. 4052 of 2011 (Annexure-3). In the aforesaid case, police submitted charge-sheet against the complainant and other family members (Annexure-4).

Learned counsel appearing for the State opposes the application by contending that there are allegations against the petitioner and no ground for quashing the entire proceedings is made out.

From perusal of the material on record and looking into the facts of the case at this stage, it cannot be said that no offence is made out against the petitioner. All the submissions made at bar relates to the disputed questions of fact, which cannot be adjudicated upon by this Court in exercise of power conferred under section 482 Cr. P.C. Only a prima facie satisfaction of the Court about the existence of sufficient ground to proceed in the matter is required. At this stage only prima facie case is to be seen in the light of the law



laid down by Supreme Court in cases of R.P. Kapur Vs. State of Punjab, A.I.R. 1960 SC 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P. Sharma, 1992 SCC (Cr.) 192, Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283 and recently in A.R.C.I. Vs. Nimra Cerglass Technics (P) Ltd. (2016) 1 SCC 348. The submission made by the learned counsel for the petitioner call for adjudication on pure questions of fact which may be adequately gone into by the trial Court in this case. This Court does not deem it proper, and therefore cannot be persuaded to have a pre-trial before the actual trial begins. The disputed defence of the accused cannot be considered at this stage. Moreover, the petitioner has got a right of discharge through a proper application for the said purpose and he is free to take all the submissions in the said discharge application before the trial Court. The prayer for quashing the order taking cognizance is refused.

The application accordingly stands dismissed.

(Arvind Srivastava, J)

Manish/-

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