

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.20507 of 2011

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1. Anita Devi, D/o late Haribansh Prasad, W/o Manoj Kumar Gaur
 2. Sunil Kumar @ Sunil Prasad, S/o late Haribansh Prasad
 3. Vijay Kumar @ Vijay Prasad, S/o late Haribansh Prasad
 4. Sanjay Kumar @ Sanjay Prasad, S/o late Haribansh Prasad

All the above residents of Nayagaon, being the Baptists Church, P.S. East Colony, Jamalpur, District- Munger

5. Bhrigunath Prasad @ Bhrigunath Gaur, S/o late Nihor Sah, R/o Vill. Barki Nainijor, P.S. Chauki Barki Nainijor, District – Buxar.

.... Petitioner/s

Versus

1. The State of Bihar
2. Manoj Kumar Gaur, S/o Sri Lalan Gaur, Vill. & Post – Kathar, P.S. Krishnabrahm, District – Buxar, presently in the District Office of Food Corporation of India, behind Patel Maidan, Town & P.S. Samastipur, District – Samastipur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Prashant Sinha
For the State : Mr. Jharkhandi Upathyay
For the Opposite Party No.2 : Mr. Tarun Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT

Date: 21-08-2017

Heard learned counsel for the parties.

Petitioners, by means of this application under section 482 of the Cr. P.C., have invoked the inherent jurisdiction of this Court with prayer to quash the order dated 03.12.2010 passed by S.D.J.M., Samastipur in C.R. No. 86 of 2010 (T.R. No. 2474 of 2010), whereby cognizance has been taken against the petitioners for the offences under section 323 and 380/34 of the I.P.C.

The contention of learned counsel for the petitioners is that no offence against the petitioners is disclosed and the present prosecution has been instituted with *mala fide* intention for the



purposes of harassment.

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

From perusal of the materials available 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 petitioners. All the submissions made at bar relates to the disputed questions of facts, 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 the Supreme Court in cases of ***R.P. Kapur Vrs. State of Punjab, A.I.R. 1960 SC 866, State of Haryana Vrs. Bhajan Lal, 1992 SCC (Cr,) 426, State of Bihar Vrs. P.P. Sharma, 1992 SCC (Cr.) 192, Zandu Pharmaceutical Works Ltd. Vrs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283 and recently in A.R.C.I. Vrs. Nimra Cerglass Technics (P) Ltd. (2016) 1 SCC 348.*** The submissions made by the learned counsel for the petitioners 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 petitioners have got a right of discharge through a proper application for the said purpose and they are 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)

Shailendra/-

AFR/NAFR	NAFR
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