

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.16137 of 2014

Arising Out of PS.Case No. -12 Year- 2013 Thana -NAYAGAON District- BEGUSARAI

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Natho Rai Son of Late Madho Rai Resident of Village - Dariyapur, P.S.- Naya Gaon, District - Begusarai

.... Petitioner/s

Versus

1. The State of Bihar Null Null
2. Rmovatar Yadav Son Of Late Babu Ram Yadav Resident Of Village - Dariyapur, P.S.- Naya Gaon, District - Begusarai

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ashish Kumar

For the Opposite Party/s : Mr. Nityanand (A.P.P.)

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

Date: 21-09-2017

Heard both the parties.

Petitioner, by means of this application under section 482 of the Cr. P.C., has invoked the inherent jurisdiction of this Court with prayer to quash the order dated 02.04.2013 passed by C.J.M., Begusarai in Naya Gaon, P.S. Case No. 12 of 2013, whereby cognizance has been taken against the petitioner for the offences under sections 341, 323 and 504/34 of the I.P.C.

The contention of 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. It is further submitted that there is delay in



lodging of first information report without their being any explanation. In fact, a land dispute is going on between the parties with regard to their respective claim over a piece of land. The present prosecution case has been lodged with oblique motive to resolve a civil dispute under the garb of present criminal proceeding, which is out and out misuse of the process of Court.

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 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 petitioner. 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 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)

Shailendra/-

AFR/NAFR	NAFR
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