

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38198 of 2013

Arising Out of PS.Case No. -2 Year- 2009 Thana -HARIJAN District- PATNA

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1. Kanti Devi, W/o Late Hardeo Singh, Resident of Village Saguna, P.S. Danapur, District Patna
 2. Amit Anand @ Anna, S/o Late Hardeo Singh, Resident of Village Saguna, P.S. Danapur, District Patna
 3. Birendra Singh, S/o Late Ram Chandra Singh, Resident of Village Saguna, P.S. Danapur, District Patna
 4. Ravindra Singh @ Ramendra Singh @ Ramendra Kumar, S/o Late Ram Chandra Singh, Resident of Village Saguna, P.S. Danapur, District Patna

.... Petitioners

Versus

1. The State of Bihar
2. Meera Devi, W/o Jagdish Choudhary, R/o Village Saguna, P.S. Danapur, District Patna

.... Opposite Parties

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Appearance :

For the Petitioners	:	Mr. D.K. Sinha, Senior Advocate Mr. Rikesh Sinha, Advocate
For the State	:	Mr. Binay Krishna, Spl. P.P.
For O.P. No.2	:	Mr. Dhanendra Choubey, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 18-07-2017

Petitioners in this application challenged for quashing order dated 23.05.2013, passed by learned S.D.J.M., Danapur, Patna in SC/ST P.S. Case No.2/2009 whereby he has taken cognizance of the offence under Sections 447, 341, 323, 384, 379/34 of IPC as well as under Sections 3(i)(x)(xii) of SC/ST (Prevention of Atrocities) Act.

2. Meera Devi, opposite party no.2, lodged FIR in Scheduled Caste and Scheduled Tribe Police Station, Patna bearing SC/ST P.S. Case No.2/2009 under Sections 447, 341, 323, 384, 379/34 of IPC as well as under Sections 3(i)(x)(xii) of SC/ST (Prevention of Atrocities) Act. The FIR was instituted on the basis of written information submitted before the Superintendent of Police



(Weaker Section), Criminal Investigation Department, Patna, Bihar on 24.12.2008.

3. Allegation in brief is that on 23.12.2008 at noon she was going to her house and on the way, the accused persons intercepted her and naming her caste name, assaulted with leg and fist. It is also alleged that Amit Anand, one of the accused, tried to pull her *Sari* and made an attempt to rape and his mother snatched gold chain. Many persons assembled there but none intervened.

4. Learned counsel for the petitioners submits that this prosecution is malicious in nature as the informant wants to use the *Rasta* through the land of the accused persons so for putting pressure she files criminal cases. On earlier occasion also, case of similar nature was filed bearing Case No.3570(C) of 2007 leveling almost similar allegation and the same was dismissed. In the present case, FIR was registered on 10.02.2009 but received in the court of SDJM on 13.02.2009 after a lapse of three days without any explanation. Learned counsel also refers to the enquiry report dated 12.01.2009 done prior to lodging of the FIR and submits that witnesses named therein are not actual persons. Under RTI from the concerned police station a report was obtained regarding these two witnesses whether they reside in the Bank Colony in Gola Road or not? The report shows that they do not reside at that place. It is further submitted that the dispute is always raised by the informant only for the purpose of using



Rasta from the land of the petitioners though she has already a *Rasta* from other side. A proceeding under Section 144 was also initiated earlier over the same land. The order passed under Section 144 was made absolute against the husband of the informant-second party in the proceeding as the *Rasta* was not found used by him through the land of the petitioners, so by lodging this present case again she intends to put pressure on the petitioners to allow her to use the *Rasta* through their land. Moreover the allegation also on the face of it appears improbable. One of the allegations is that Amit Anand, son of petitioner no.1 Kanti Devi, is said to have made an attempt of rape in presence of his mother, therefore, this case is malicious in nature and continuation of the proceeding would be abuse of the process of the court.

5. Learned counsel appearing on behalf of opposite party no.2 supports the order taking cognizance and submits that there is allegation against the accused persons of assaulting her on the way and also abusing her by naming her caste.

6. Having considered rival submissions of both sides and on perusal of the record the Court is of the view that the prosecution launched by opposite party no.2 appears malicious in nature. There is long standing dispute between the informant and the petitioners as she wants to use the *Rasta* over the land of the petitioners. On earlier occasion a proceeding under Section 144 was also initiated at the



instance of one of the petitioners Amit Anand in which the husband of the informant Jagdish Choudhary was second party and the Magistrate after enquiry on the spot comes to the conclusion that the *Rasta* of the land of the petitioners was never used by the second party despite that they are trying to construct the *Rasta* over that land, so order under Section 144 was made absolute against husband of the complainant-opposite party no.2. Prior to this case a complaint case was also filed numbered as Case No.3570(C) of 2007 by Jagdish Choudhary, husband of the informant of the present case. The genesis of the occurrence was the same as in the present case for using the *Rasta* and the same was dismissed after enquiry by the court of learned Chief Judicial Magistrate, Patna, so in the backdrop of these facts the present case appears malicious in nature, therefore, continuation of the present criminal proceeding would be abuse of the process of the court, hence the impugned order dated 23.05.2013, passed by learned S.D.J.M., Danapur, Patna in SC/ST P.S. Case No.2/2009 is hereby set aside.

7. The petition stands allowed.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
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