

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.36895 of 2013

Arising Out of PS.Case No. -467 Year- 2008 Thana -VAISALI COMPLAINT CASE District-
VAISHALI(HAJIPUR)

=====

1. Madan Mohan Prasad Singh S/O Late Bipin Bihari Singh R/O Vill.-Chhatwara
Chakshekh Nizam, P.S.-Mahua, Dist.-Vaishali

.... Petitioner/s

Versus

1. State Of Bihar
2. Mukesh Rai S/O Late Nand Kishore Rai R/O Vill.-Chhatwara Kapoor, P.S.-
Mahua, Dist.-Vaishali

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ram Shankar Das
For the Opposite Party/s : Mr. Braj Kishor Prasad

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
C.A.V. JUDGMENT

Date: 20-06-2017

Heard learned counsel for the parties.

Petitioner, by means of this application under section 482 of the Code of Criminal Procedure, has invoked the inherent jurisdiction of this Court with prayer to quash the order dated 18.03.2011, passed by Shri Manish Dwivedi, Judicial Magistrate, Vaishali at Hajipur, in Complaint Case No. 467 of 2008, whereby cognizance has been taken against the petitioner for the offences under section 417, 465 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. It is further submitted that delivery of possession is in petitioner's favour (Annexure-2). Petitioner was allowed to harvest and cultivate on the land in question vide order dated 01.03.2009 passed in Cr. W.J.C. No. 865 of 2009 (Annexure-3). As a matter of fact the complainant died on 08.0.2011 whereas his Hajiri was filed on 18.03.2011 on which date cognizance was taken (Annexure-4). As such, launching of criminal proceeding where civil prosecution has been finalized is not sustainable. No criminal offence is made out in the complaint petition, and as such, the order taking cognizance is bad in law and is fit to be quashed.

Learned counsel appearing for the State opposes the application by contending that there are allegations against the petitioner and no ground for quashing the order taking cognizance 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 facts and defence, which cannot be adjudicated upon by this Court in exercise of power conferred under section 482 Cr. P.C. The materials which have been placed here on behalf of the petitioners as per Annexure-2, 3 & 4, were not before the Magistrate. Only a prima facie satisfaction of the Court



about the existence of sufficient ground to proceed in the matter is required. 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/-

AFR/NAFR	NAFR
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