

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.43348 of 2013

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Harendra Mahto S/O Chandrama Mahto Resident Of Village Laguni, Police Station Daudpur, Post Office Bareja, District Saran At Present Residing At Holding No. 108, Sora Mandir, Kachrapara, Dakpara, Police Station Kachrapara, District 24 Pargana (W. Bengal).

.... Petitioner

Versus

1. The State Of Bihar.
2. Shiv Pyari Kunwar W/O Late Ratan Sah, Mahto Resident Of Village Laguni, P.S. Daudpur, P.O. Bareja, District Saran.

.... Opposite Parties

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Appearance :

For the Petitioner : Mr. Binod Kumar Sinha, Advocate.

For the Opposite Parties : Mr. Jitendra Kr. Singh 1 (APP)

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL ORDER

4 16-05-2017 Supplementary affidavit has been filed on behalf of the petitioner. Let it be kept on the record.

The instant Criminal Miscellaneous has been filed for quashing the order dated 12.09.2008 passed by Sri P.K. Choudhary, the learned Judicial Magistrate, 1st Class, Chapra in Complaint Case No. 122 of 2008/ Trial No. 1112 of 2013, whereby and whereunder, the learned Magistrate has found prima-facie case to be made out against the petitioner for the offences under sections 147, 148, 379 and 385 of the I.P.C.

Heard the learned counsel for the petitioner and the learned A.P.P. for the State.

The complaint case no. 122 of 2008 was filed by the



opposite party no.2 Most. Shiv Payari Kunwar, alleging therein, that the complainant is 70 years old widow lady and her son Kamaldeo Prasad is doing work at Kolkatta in the rolling mill and another son Mandeo Prasad is working at Gomo. The petitioner and other co-accused have formed an unlawful assembly and due to fear nobody dares to open mouth against them. All the accused persons named in the complaint petition came on 09.01.2008 at about 4 P.M. and called the complainant and asked to pay Rs. 5,000/- as her sons are earning lot otherwise to kill her. When the complainant asked reason the accused persons pushed her inside the house and the petitioner pointed out pistol and asked about the money otherwise to kill her, then the complainant out of fear disclosed that in the box there is Rs. 7,000/-. The co-accused Rajeshwar Mahto snatched the key of the box and took out Rs. 7,000/- and thereafter they fled away causing threats that if she will lodge case the entire family members will be finished. On the day of occurrence all the accused persons were watching the complainant resulting she did not go to the police station on that day and when in the second day the complainant went to the police station then she was asked to lodge case in the court.

The complainant was examined on the solemn affirmation and two enquiry witnesses were also examined,



namely, Vikash Kumar and Prem Kumar Singh. Both supported the allegations as made out in the complaint petition and then the learned Magistrate passed the impugned order.

Submissions of the petitioner is that the petitioner was not present at the time of occurrence in the village, the petitioner has been living at West Bengal and doing the business of Hardware at Kachrapara, District 24 pargana and he never came to his village home since long, cognizance has not been taken under the Arms Act, due to the land dispute this false case has been lodged, the petitioner and the complainant are the gotias in relationship, the prosecution of the petitioner is an abuse of the process of law, hence the cognizance order is fit to be set aside.

The learned A.P.P., on the other hand, submits that there is no illegality, incorrectness or impropriety in the impugned order and the same is fit to be confirmed.

Having considered the submissions urged at the Bar, going through the complaint petition and the order dated 12.09.2008, it is manifest that the learned Magistrate after applying his judicial mind has passed the impugned order legally after finding prima-facie case to be made out under sections 147, 148, 379 and 385 of the I.P.C. At the time of taking cognizance the court is required only to see as to whether on the basis of the



materials collected during enquiry prima-facie offence is made out or not. At that time defence of the accused persons cannot be looked into. Thus, the defence of the petitioner that he was not present at the place of occurrence as at that time he was at Kolkatta can well be adjudged at the time of hearing on the point of charge. At this stage meticulous scrutiny of the evidence is not required.

In the result, finding no merit in this Criminal Miscellaneous the same is hereby dismissed and the impugned order is hereby confirmed.

However, the petitioner is given liberty to raise all these points at the time of hearing on the point of charge in accordance with law.

(Jitendra Mohan Sharma, J)

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