

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38561 of 2013

Arising Out of Case No. -1827 Year- 1201 Thana -MADHUBANI COMPLAINT CASE District-
MADHUBANI

- =====
1. Shambhu Narayan Thakur @ Shambhu Thakur, Son of late Dinesh Thakur
 2. Kundan Kumar @ Rajeev Kumar Son Of Shri Shambhu Narayan Thakur @
Shambhu Thakur
 3. Subhash Kumar, Son Of Shri Shambhu Narayan Thakur @ Shambhu Thakur
- All are resident of village - Rajia, Police Station- Benipatti, District- Madhubani

.... Petitioner/s

Versus

1. State of Bihar
2. Arbind Kumar Thakur, Son of Late Dinesh Thakur, resident of village - Rajia,
Police Station- Benipatti, District- Madhubani

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 07-07-2017

Heard learned counsel for the parties.

2. The petitioners, in this application, have challenged the order dated 12.07.2013 passed by the Judicial Magistrate, 1st Class, Madhubani in Complaint Case No. 1827 of 2013, whereby he has taken cognizance under Sections 323, 379, 384 and 504 of the Indian Penal Code.

3. Learned counsel appearing on behalf of the petitioners submits that petitioner no. 1 and the complainant are full-brothers and as partition suit No. 75 of 2012, pending before the court of Sub



Judge-I, Sitamarhi, was filed by the petitioner no. 1 on 28.02.2012, only subsequently this false case has been filed on 06.11.2012, after receiving of notice in that partition suit. O.P. No. 2 is in the habit of filing such frivolous case time and again. He submits that earlier also O.P. No. 2 filed a complaint case and a police case, but both cases were found false at the enquiry and investigation stage. In the present case, allegation is that complainant was going to deposit Rs. 15,000/- after selling trees, but the petitioners intercepted him on the way and assaulted him, also snatched away Rs. 15,000/- from him. It is submitted that only two witnesses are mentioned in the complaint and both are complainant's sons. He submits that the alleged occurrence is said to have taken place in the broad day light on the road, but there is no any independent witness to this occurrence. Moreover, at the relevant point of time, petitioner no. 2 was in Delhi and petitioner no. 1 is a teacher in a Government school and on the alleged date of occurrence and time, he was in school, a certificate of the Principal of that school showing his presence in the school at the date and time of occurrence. He next submits that petitioner no. 2 is a Chartered Accountant and was doing his training in a firm situated in Delhi.

4. None appears on behalf of the O.P. No. 2 though the name of learned counsel appears in the list.

5. Having considered the submissions and on perusal of



record, it appears that petitioner no. 1 and O.P. No. 2, both are full-brothers. Partition Suit No. 75 of 2012 was filed by the petitioner no. 1 on 28.02.2012 and present complaint was filed by the O.P. No. 2 on 06.11.2012. The allegation of theft is levelled against the petitioners who happens to be the own brother of the complainant and there is no other independent witness except the sons of the complainant. Earlier also, he used to file complaint against the petitioners and these cases were found not true. This shows that a malicious prosecution has been filed by the complainant against his own brother, which appears absurd and improbable. So this complaint case appears to have been filed in order to wreck vengeance against his own brother, therefore, continuation of the criminal proceeding in this case will be abuse of the process of court. So, criminal proceeding including order taking cognizance dated 12.07.2013 passed in Complaint Case No. 1827 of 2013 is set aside.

6. The quashing petition stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
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