

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.36770 of 2013

Arising Out of PS.Case No. -1247 Year- 2010 Thana -BHABHU(KAIMUR) COMPLAIN C
District- BHABHUA (KAIMUR)

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1. Din Dayal Dubey S/O Shri Ram Chandra Dubey Resident Of Village Sapnawtiya, P.S. Sonhan, District Kaimur (Bhabhua).
 2. Ram Pratap Dwivedi S/O Shri Ram Chandra Dubey Resident Of Village Sapnawtiya, P.S. Sonhan, District Kaimur (Bhabhua).
 3. Surendra Dubey S/O Shri Ram Chandra Dubey Resident Of Village Sapnawtiya, P.S. Sonhan, District Kaimur (Bhabhua).

.... Petitioner/s

Versus

1. The State Of Bihar.
2. Ram Surat Ram S/O Late Mahadeo Ram Resident Of Village Sapnawtiya, P.S. Sonhan, District Kaimur (Bhabhua).

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. K. K. Mishra, Advocate

For the Opposite Party/s : Mr. A. L. Pandit, APP

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 05-09-2017

Heard learned counsel for the petitioners as well as learned Additional Public Prosecutor for the State. No one appears on behalf of Opposite Party No.2.

2. Opposite Party No.2 Ram Surat Ram had filed Sonhan (Bhabhua) P.S. Case No.81 of 2009 under Section 435 of the Indian Penal Code on 07.03.2009 against unknown alleging therein that unknown person committed arson in his outer house causing damage to the household articles. He specifically stated that he could not recognize the unknown person. A copy of the F.I.R. is at Annexure-



4. After investigation of the case the police submitted charge sheet on 30.04.2009 against unknown vide Annexure-5. Thereafter, murder of the cousin of the petitioners was committed by the named accused persons and Ram Chandra Dubey, the father of the petitioners, lodged Bhabhua (Sonahan) P.S. Case No.40 of 2010 on 03.02.2010 against the sons of the informant of the present case and others. Thereafter the informant filed a protest petition in Sonhan (Bhabhua) P.S. Case No.81 of 2009 stating therein that the villagers, who are witness of the case, informed him that the petitioners had committed arson in his house.

3. Submission of the learned counsel for the petitioners is that the background of allegation and the specific statement in the First Information Report that the real miscreants were not known to the informant would reveal that concocted allegation have been leveled in the protest petition which was treated as Complaint Case No.1247 of 2010 by the learned Court-below and by the impugned order dated 17.09.2012 process has been issued against the petitioners.

4. Considering the background of the allegation especially the fact that the F.I.R. of the case is against unknown, none of the witnesses appeared before the police during investigation to name the culprits nor they filed any affidavit before the learned



Court-below stating therein that they are witnesses of the occurrence, the police submitted final form against unknown person after completion of the investigation and the name of the petitioner was disclosed in the complaint petition only after the sons of the complainant of this case were arrayed as accused in the murder case of the cousin of the petitioners. Apparently, protest petition suffers from concoction and malicious prosecution and the impugned order suffers from abuse of the process of the Court. Hence, the impugned order is not sustainable in law.

5. Accordingly, the impugned order is set aside and the application stands allowed.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
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