

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.53869 of 2013

Arising Out of PS.Case No. -161 Year- 2010 Thana -KARJA District- MUZAFFARPUR

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1. Ajit Kumar Singh @ Pappu Singh S/O Ashok Singh @ Ashok Kumar Singh Resident Of Village Marwan, P.S. Karja, District Muzaffarpur.
 2. Ashok Kumar Singh @ Ashok Singh S/O Late Ram Swarup Singh Resident Of Village Marwan, P.S. Karja, District Muzaffarpur.
 3. Saroj Singh @ Gauravy Kumar S/O Ashok Kumar Singh @ Ashok Singh Resident Of Village Marwan, P.S. Karja, District Muzaffarpur.

.... Petitioner/s

Versus

1. The State Of Bihar.
2. Suresh Ram S/O Late Yogendra Ram Resident Of Village Narvan, P.S. Karja, District Muzaffarpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar Pandey, Advocate

For the Opposite Party/s : Mr. Ram Shankar Das, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

CAV JUDGMENT

Date: 08th December, 2017

Heard learned counsel for the parties.

This application, under Section 482 of the Code of Criminal Procedure, has been filed by the petitioners for quashing of order dated 27.11.2012 passed by the learned Sub-Divisional Judicial Magistrate (West), Muzaffarpur in Trial No. 2408 of 2013 arising out of Karja P.S. Case No. 161 of 2010, whereby the learned court below taken cognizance against the petitioners under Sections 341, 323, 379 and 504 of the Indian Penal Code as well as under Section 3(1)(X) of the S.C./S.T (P.A.) Act.

The brief facts of this case are that when the informant,



Suresh Ram, reached at his house after closing his shop, he was called by one Manoj Singh and when the informant went to Manoj Singh, he along with Pappu Singh and Saroj Singh tied Gamcha around the neck of the informant and started beating him with fists and kick and one Ashok Singh humiliated him denoting his caste name. Further, Manoj Singh is alleged to have taken Rs. 5600/- from the pocket of the informant. It has further been alleged that the entire occurrence took place in the background of the fact that the informant got a sale deed executed from one Krishna Singh while the petitioners have also keen eyes on that very land.

Learned counsel for the petitioners has submitted that petitioners are innocent and have not committed any offence as alleged in the First Information Report. In fact, the petitioners have falsely been implicated in this case on account of a land dispute. As a matter of fact, no occurrence has taken place as alleged in the F.I.R. as this fact has also been supported by the final form, which is at annexure-2, in which the police after examining the several witnesses have found the case not to be true against the petitioners, which is evident from the paragraphs 76 and 77 of the case diary. Moreover, the co-accused Monoj Singh has also sustained injury which according to doctor has been caused by hard and blunt substance, which is clearly evident from the injury report available



on record. However, the learned Magistrate without considering the aforesaid facts and deferring with police report has, erroneously, taken cognizance under Section 341, 323, 379, 504 of the Indian Penal Code as well as Section 3(1)(X) of the SC/ST (P.A.) Act against the petitioners. Therefore, the order taking cognizance deserves to be quashed.

Learned counsel appearing for the State opposes the application by contending that there are allegations against the petitioners and the court below after going through the materials available on record has found a prima facie case made out against the petitioners and rightly taken cognizance for offence under Sections 341, 323, 379, 504 of the Indian Penal Code as well as Section 3(1)(X) of the SC/ST (P.A.) Act. Therefore, the order taking cognizance does not requires any interference.

From perusal of the material available on record and looking into the facts of the case, it is quite apparent that the learned Magistrate, deferring with report submitted by the police and without assigning any reasons, has taken cognizance under Sections 341, 323, 379, 504 of the Indian Penal Code as well as Section 3(1)(X) of the SC/ST (P.A.) Act against the petitioners. Admittedly, in this case, accused Manoj



Singh has got injured and the injury report is also a part of the case diary but the learned Magistrate has not considered the same nor given any finding while taking the cognizance. Therefore, the order taking cognizance dated 27.11.2012, passed by the Sub-Divisional Judicial Magistrate (West), Muzaffarpur, is not sustainable in the eye of law and the same is, accordingly, set aside.

In view of the aforesaid, the matter is remanded to the concerned court below who will pass afresh order in accordance with law after hearing the parties preferably within a period of three months.

This criminal miscellaneous application is, accordingly, disposed of.

(Arvind Srivastava, J.)

Brajesh/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	11.12.2017
Transmission Date	11.12.2017

