

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.25138 of 2014

Arising Out of PS.Case No. -290 Year- 2012 Thana -DARBHANGA COMPLAINT CASE District-DARBHANGA

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1. Abdul Rashid S/o Late Khaliur Rahman
 2. Najma Khatoon W/o Abdul Rashid
 3. Jisan @ Jisan Ahmad S/o Abdul Rashid (Minors)
 4. Md. Dilsad @ Dilsad Ahmad S/o Abdul Rashid (Minors)
- All are Resident of Village Askaul, P.S. (O.P.) Alinagar, District-Darbhang.
5. Md. Aslam S/o Late Ali Hussain Resident of Village Nari, P.S. Ghanshyampur, District Darbhanga.

.... Petitioners

Versus

1. The State of Bihar.
2. Farida Khatoon W/o Md. Mustafa Resident of Village Askaul, P.S. Alinagar (Bahera), District Darbhanga.

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Rizwanul Haque

For the Opposite Party/s : Mr. Humayu Amhad Khan, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 28-06-2017

Heard both sides.

2. This is an application under Section 482 of the Code of Criminal Procedure. The petitioners have prayed to quash the order dated 22.11.2012 passed by the learned A.C.J.M., Benipur, Darbhanga in Complaint Case No. 290 of 2012. The learned Magistrate took cognizance under Sections 341, 323, 380 of the Indian Penal Code and Sections 3 /4 of the Witchcraft Act and ordered for issuance of summons against the petitioners.



3. The facts in brief is that the complainant filed a complaint case on the file of A.C.J.M., Benipur alleging, inter alia, that on 30.07.2012, all the accused persons came at his house and asked him to cure his son by playing witchcraft. The complainant refused as she was not a witch. Thereafter, the accused assaulted her. The petitioner no. 2 caught her hair and dragged as a result of which she fell down. The petitioner no. 1 administered a glass of urine in her mouth and petitioner nos. 3 and 4 took away her household articles and ornaments worth Rs. 40,000/-. In course of enquiry, the complainant and her four witnesses supported the allegation. The court below after going through their evidences took cognizance of offence as stated above and ordered for issuance of summons against the petitioners.

4. The learned counsel for the petitioners submits that the petitioner no. 1 is a Government employee and other petitioners are his family members and relative. The petitioner no. 1 had purchased the land of plot no. 700 and 702, area 0.13 decimals by virtue of registered sale deed dated 05.08.2006 and came in possession of the said land. The dispute arose when the petitioner started constructing the boundary wall. The complainant and her family members obstructed construction work for which a proceeding under Section



144 Cr.P.C. was also initiated. The learned counsel further submits that in view of the bona fide land dispute, the criminal prosecution of the petitioners is bad in law and is fit to be quashed.

5. The learned APP for the State opposed the submissions by stating that all the witnesses in course of enquiry have supported the allegation of assault and the court below has passed the order on the basis of materials on record.

6. On perusal of record, I find that after six years of purchase of the said land, the present complaint case has been filed. At the time of enquiry, the complainant and her four witnesses have supported the allegation of assault by these petitioners. They have stated that the petitioner no. 1 administered a glass of urine in her mouth. The Magistrate finding prima facie case for the offence in question, took cognizance and accordingly, ordered for issuance of summons against them. The defence of the petitioners as regards the land dispute is to be considered at the time of trial. The proceeding under Section 144 Cr. P.C. with respect to the land of the petitioner no. 1 was initiated after two years of the occurrence.

7. In the facts and circumstances of the case, I do not find



any merit in the application. Accordingly, this application is dismissed.

(Sanjay Kumar, J)

ajaypd./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.07.2017
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