

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.29545 of 2015

Arising Out of PS.Case No. -185 Year- 2014 Thana -BHAGALPUR COMPLAINT CASE District-
BHAGALPUR

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Phool Singh @ Phool Sharma @ Ajit Kumar Sharma son of Dayanand
Sharma @ Sahajanand Sharma At Present : - Gopalpur, Police Station:-
Amarpur, District:- Banka.

.... Petitioner/s

Versus

1. The State of Bihar
2. Awadhesh Kumar Sinha Son of Sri Lakshmi Narayan Sinha R/o Radha
Rani Sinha Road , Police Station- Adampur , District- Bhagalpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rakesh Kumar Sinha

For the Opposite Party/s : Mr. Anita Kumari (App)

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR
SINGH**
ORAL ORDER

02/ 25-04-2017

Heard learned counsel for the petitioner and

Mr. J.N. Thakur for the State.

The present application has been filed for
quashing the order dated 01.09.2014 passed by learned Judicial
Magistrate, Bhagalpur in Protest –cum- Complaint Case No. 185
of 2014 arising out of Jagdishpur P.S. Case No. 166 of 2013,
whereby process has been directed to be issued after cognizance
being taken for the offences punishable under Sections 447, 384
and 427 of the Indian Penal Code.

The prosecution case is that the complainant
was planting tree on the land when the accused persons came,



made assault and demanded Rs.Two lakhs as extortion.

Learned counsel for the petitioner submits that on conclusion of the investigation the petitioner was not sent up for trial, the final form was accepted, but subsequently the matter was proceeded on the basis of protest –cum- complaint and process has been directed to be issued after cognizance being taken.

In view of this Court, at the stage of exercising jurisdiction under Section 190(1)(a) Cr.P.C. the learned Magistrate is only supposed to see whether the accusation levelled in the complaint, in the S.A. of the complainant and the statement of the enquiry witnesses constitute, prima facie, offence. A useful reference may have to the case of Sonu Gupta Vs. Deepak Gupta & Ors., 2015(2) PLJR (SC) 321. Paragraph no. 7 reads as:-

“Having considered the details of allegations made in the complaint petition, the statement of the complainant on solemn affirmation as well as materials on which the appellant placed reliance which were called for by the learned Magistrate, the learned Magistrate, in our considered opinion, committed no error in summoning the accused persons. At the stage of cognizance and summoning the Magistrate is required to apply his



judicial mind only with a view to take cognizance of the offence, or, in other words, to find out whether prima facie case has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor he is required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not.”

Moreover, the impugned order was passed on 01.09.2014 but there is nothing on record to suggest the present stage of the case.

In view of the above settled legal proposition, this Court is not inclined to interfere. Accordingly, this application is disposed with liberty to the petitioner to raise all contentions at the appropriate stage of the proceeding.

(Dinesh Kumar Singh, J)

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