

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.47520 of 2015

Arising Out of PS.Case No. -115 Year- 2012 Thana -RUPASPUR District- PATNA

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1. Pramod Rajpati Son of Late Shiv Narayan Sah
2. Smt. Durga Devi Wife of Pramod Rajpati, all resident of Mohalla-
Navneet Nagar, Rukunpura, P.S.- Rupaspur, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. Baidynath Sharma, Son of Late Jangi Sharma, R/o Mohalla- Navneet
Nagar, Rukunpura, P.S.- Rupaspur, District- Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Suraj Narain Yadav
For the Opposite Party/s : Mr. J.N. Thakur, (App)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 02-05-2017 Heard learned counsels for the petitioners, O.P.

No. 2 and the State.

The present application has been filed for quashing the order dated 18.9.2013 passed by the learned A.C.J.M., Danapur in Rupaspur P.S. Case No. 115 of 2012 whereby the process has been directed to be issued after cognizance being taken for offences under sections 341,323,324,307,384,379 and 504/34 of the Indian Penal Code.

The prosecution case, as per the written report of the informant Baidyanath Sharma is to the effect that in 2008



the petitioners purchased two shops and the land vacant behind the shops in village Rukunpura. Consequently, he came into possession and the shop was being used for keeping car and storing grains. A portion of the building having shop was also purchased by Pramod Rajpati alias Pramod Teli, Amod Kumar and Vinod Sah but the accused persons got annoyed with the purchase made by the petitioners. They initially locked the main entrance of the market and then they tried to capture the vacant land. On protest being made, the threat of life was given to the informant. On 16.7.2012 at 6 P.M. when the informant went to collect grains from the purchased shop, the accused persons hurled abuses and started assaulting the informant. The accused persons not only caused bleeding injury but when the daughter of the informant came to rescue then the gold chain of the informant's daughter was snatched by Durga Devi (petitioner no. 2) and wrist watch and rupees one thousand five hundred of the informant were snatched by Pramod Rajpati. Thereafter, the accused persons escaped from the scene after giving threat to life to the informant. On the basis of aforementioned written report, Rukunpura P.S. Case No. 115 of 2012 was registered on 16.7.2012.

On conclusion of investigation, the police



submitted final report (chargesheet) under sections 341,323,324,307,384,379 and 504/34 of the Indian Penal Code and consequently, by the impugned order, processes were directed to be issued after cognizance being taken under sections 341,323,324,307,384,379 and 504/34 of the Indian Penal Code.

It is submitted by learned counsel for the petitioners that the accusation has been levelled in the background of serious litigated relationship between the parties. At earlier point of time, the nephew of the informant lodged Rupaspur P.S. Case No. 114 of 2012 with the accusation under sections 147,148,323,307,504 Indian Penal Code. Hence, process has been directed to be issued mechanically.

It is submitted by learned counsel for the O.P. No. 2 that after finding sufficient material during investigation final form (chargesheet) was submitted and consequently the process was directed to be issued.

Considering the rival submissions of the parties, this court is of the view that at the stage of passing order under section 190(1)(b) Cr.P.C., the Magistrate has only to see that the prima facie case is made out. At this stage, the Magistrate



has one advantage of having police report containing the materials collected during investigation and submitted before the court through the report under section 173(2) Cr.P.C. This is not the stage where the Magistrate has to look into the defence of the accused as has been held in the case of State of Orissa Vs. Debendra Nath Padhi, (2005) 1 Supreme Court Cases 568. Paragraph 23 reads as follows:

“23. As a result of aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. Satish Mehra's case holding that the trial court has powers to consider even materials which accused may produce at the stage of Section 227 of the Code has not been correctly decided.”

From perusal of the impugned order, it appears that the same has been passed after going through the case diary and other materials by learned Magistrate. Hence, it cannot be said that the learned Magistrate has not applied his judicial mind. More over, the impugned order was passed on 18.9.2013 but there is nothing on record to suggest the present stage of the case.

Hence, this court is not inclined to interfere in the matter at this stage. However, this application is disposed



of with liberty to the petitioners to raise all the issues at the appropriate stage of the proceeding.

(Dinesh Kumar Singh, J)

Anil/-

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