

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.23478 of 2011

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1. Dharmendra Prasad, son of late Shivnath Prasad @ Shiv Narayan Prasad, resident of Gannipur, P.S. Hilsa, Distt. Nalanda.
 2. Nityanand Kumar, son of Saryug Sharan
 3. Rajesh Kumar, son of Saryug Sharan
- Both resident of Makdumpur, P.S. Silao, Distt. Nalanda.
4. Shyam Sundar Chaudhary, son of Bipat Chaudhary, resident of Khorampur, P.S. Hilsa, Distt. Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar
2. Raju Kumar, son of Surendra Kumar @ Shailendra Parasad @ Surendra Prasad, resident of Saidanpur, P.S. Hilsa, Distt. Nalanda.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Uday Prasad, Advocate.

For the Opposite Party/s : Mr. Ganesh Pd. Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 19-05-2017

1. This application has been filed under Section 482 of the Code of Criminal Procedure for quashing the order dated 10.5.2011 passed by the Judicial Magistrate, 1st Class, Hilsa (Nalanda) in connection with Complaint Case No. 1074C of 2010 by which the learned Magistrate has after holding enquiry found *prima facie* case against the petitioners for the offence under Sections 120(B) and 468 of the Indian Penal Code.

2. In the instant case, although, the name of the counsel for the opposite party No. 2 is appearing but none appears on behalf of opposite party No. 2. From the order dated 21.1.2014, it



appears that learned counsel for the opposite party no. 2 appeared on that date.

3. Heard learned counsel for the petitioners and learned counsel for the State.

4. The counsel for the petitioners has submitted that this case is a counter blast of Hilsa P.S. Case No. 141 of 2010 filed by them on 30.4.2010 against the father of the complainant and other accused persons for committing cheating with the daughter of the petitioner No. 1 on pretext of getting her job in railway department. In that case police after investigation submitted charge sheet against the father of the complainant and other accused persons for the offence under Sections 406, 420, 468 and 471 of the Indian Penal code. Thereafter, as a counter blast, the instant complaint has been filed by son of Surendra Kumar who is one of the accused in Hilsa P.S. case No. 141 of 2010 making similar allegation in the complaint against the petitioners.

5. The court below has after holding enquiry found *prima facie* case for the offence under Sections 120(B) and 468 of the Indian Penal Code against these petitioners by the impugned order. The Solemn Affirmation of the complainant has been enclosed with the complaint petition wherein the complainant has stated to court question that he has no any proof of giving Rs.5,00,000/- to the



accused persons. He has further stated that only '*Baindil*' was written in the name of Training Institute situated in the State of West Bengal.

6. Lower court record has been received in this case wherein besides Solemn Affirmation of the complainant statement of three other witnesses were recorded during enquiry under Section 202 Cr. P.C. Although, those three witnesses have merely supported the case of the complainant, but not stated about any document of having given money to the complainant by the petitioners or of receiving any appointment letter by the complainant.

7. In such circumstances, this Court is of the view that continuance of criminal proceeding against the petitioners is merely abuse of the process of court as the same has been filed maliciously merely to take vengeance for filing the earlier case by the daughter of the petitioner No. 1 against the father of the complainant and other accused persons.

8. The counsel for the petitioner has relied on a **decision of Hon'ble Supreme Court** reported in *1992 Supl (1), Page, 335, (State of Haryana Vrs. Bhajan Lal & Ors.)* in which the Hon'ble Supreme Court has clearly laid down in Clause-7 of paragraph-102 that "where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the



accused and with a view to spite him due to private and personal grudge”, is liable to be quashed.

9. Accordingly, the impugned order dated 10.5.2011 passed by the Judicial Magistrate, 1st Class, Hilsa (Nalanda) in connection with Complaint Case No. 1074C of 2010 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioners for the offence under Sections 120(B) and 468 of the Indian Penal Code as well as the entire Criminal Proceedings against the petitioners, are hereby quashed.

10. This Criminal Miscellaneous application stands allowed.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	24.05.2017
Transmission Date	24.05.2017

