

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.34892 of 2014

Arising Out of PS.Case No. -46 Year- 2011 Thana -LAUKHI District- MADHUBANI

- =====
1. Birendra Kumar Yadav, son of Late Jaikrishna Yadav
 2. Asha Devi , Wife of Birendra Kumar Yadav
 3. Ramnandan Yadav, Son of Late Sukhdeo Yadav
- All three resident of Village-Basuari, Police Station-Ghoghardiha, District-Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar
2. Digambar Prasad Mandal Son of Late Bhagwat Mandal Resident of Basuari, Police Station-Ghoghardiha, District-Madhubani.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Anil Kumar Jha, Sr. Advocate
Mr. Lakshmindra Kumar Yadav, Advocate
For the O.P.No.2 : Mr. Diwakar Prasad Singh, Advocate
For the State : Mrs. Asha Kumari (APP)

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 18-08-2017

Heard Mr. Anil Kumar Jha, senior Advocate appearing on behalf of the petitioners, Mr. Diwakar Prasad Singh, Advocate for the Opposite Party No. 2 and counsel for the State.

This case was heard at length on 16.8.2017 but in the absence of opposite party No. 2, the case was adjourned for further hearing today. Mr. Diwakar Prasad Singh, Advocate appeared on behalf of the Opposite Party No. 2 and made his submissions.

Counsel for the petitioners has submitted that the present case is abuse of the process inasmuch as initially FIR was lodged and



the police, after thorough investigation, submitted final form stating that the allegation itself is false. After submission of the final form, the Opposite Party No. 2 filed protest petition which was treated as complaint case and on the basis of complaint case, cognizance in the instant case has been taken vide order dated 3.7.2014.

Mr. Jha submitted that only because of the political rivalry and in order to settle political score the FIR and after submission of the final form, protest petition has been filed. He submitted that the case of the petitioners is covered by the judgment of the Apex Court in the case of **State of Haryana Vs. Choudhary Bhajan Lal: AIR 1992 Sc 602** as cases filed to settle the political vendetta like the present one is a case within the preview of the cases where the Court should interfere with the proceedings for the ends of justice in exercise of jurisdiction under Section 482 of the Code of Criminal Procedure. He submits that allowing the present prosecution to continue is an abuse of the process of law and referring to the lodging of the FIR which was found to be false after investigation, he submitted that petitioners should not be compelled to face the ordeal of trial in such cases which is founded on political vendetta.

Mr. Diwakar Prasad Singh, counsel appearing on behalf of the Opposite Party No. 2 submits that the power under Section 482 of the Code of Criminal Procedure should be exercised sparingly and



the Court should not scuttle the trial. He submitted that there are materials available in the complaint case to proceed with the trial and as such this Court should not interfere with the trial at this stage.

The Court finds substance in the submission of the counsel for the petitioners that innocent should not be compelled to face the ordeal of trial as for settling the political vendetta having regard to the Apex Court judgment in **State of Haryana Vs. Choudhary Bhajan Lal** (supra) in the matter of exercise of jurisdiction under Section 482 Cr.P.C., Mr. Diwakar Prasad Singh is also correct in his submission that if there are materials available before the trial court this Court should not exercise jurisdiction under Section 482 Cr. P. C. to scuttle the trial.

The ground reality of filing frivolous cases for political reasons and the trauma of pending cases individual has to face on such frivolous and malicious prosecution is also the concern of this Court. In order to balance the equity, this application is disposed of with a direction to the court below to expedite the hearing of the case and conclude the trial at the earliest preferably within a period of six months.

It goes without saying that in the event the allegation is found to be false, the malicious prosecution is the consequence and the court below is expected to act accordingly. In addition thereto the



court below should also take steps to prevent recurrence of filing of frivolous cases by imposing exemplary cost.

It is made clear that this Court has not expressed any opinion on the merit of the case and the trial court will decide the case without being influenced by any observation made in this order.

(Anil Kumar Upadhyay, J)

S.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.08.2017
Transmission Date	

