

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.51682 of 2014

Arising Out of PS.Case No. -47 Year- 2011 Thana -DAUDNAGAR District- AURANGABAD

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1. Surendra Thathera son of Late Dasai Thathera
 2. Chhotu @ Chaka son of Inder Thathera
 3. Ramjee Thathera son of Late Dasai Thathera
 4. Manoj Thathera son of Ramjee Thathera
 5. Shambhu Kumar, son of Late Dasai Thathera
 6. Inder Thathera son of Late Dasai Thathera
 7. Raja Babu, son of Ramjee Thathera
 8. Rajesh Thathera son of Ramjee Thathera
 9. Sohrai Thathera son of Surendra Thathera
 10. Shankar Kumar, son of Late Dasai Thathera
 11. Jitendra Kumar son of Gopal Kumar
 12. Gopal Kumar, son of Late Punnalal Thathera
 13. Chandan Thathera son of Surendra Thathera All resident of village- Daudnagar, Mahabir Chabutara, Ward No. 14, PO + P.S.- Daudnagar, District- Aurangabad (Bihar)

.... Petitioner/s

Versus

1. The State of Bihar
2. Prabha Devi wife of Dwarika Prasad, resident of village- Daudnagar, Mahabir Chabutara, Ward No. 14, Post and P.S.- Daudnagar, District- Aurangabad (Bihar)

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Purushotam Sharma

For the Opposite Party/s : Mr. Mustaque Alam (App)

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL ORDER

3 24-11-2017 Heard the learned counsel for the petitioners and the learned APP for the State.

This Criminal Miscellaneous has been filed against the order dated 20.09.2014 passed by the learned Adhoc Additional Sessions Judge-II, Aurangabad in connection with Daudnagar P.S. Case No. 47 of 2011, G.R. No. 259 of 2011 and



the order dated 23.10.2011 by which the learned S.D.J.M. Daudnagar has taken cognizance against all the petitioners under sections 147, 148, 149, 341, 354, 323, 307, 452 and 427 of the I.P.C.

On the basis of the written report of the informant Prabha Devi this case has been instituted. In short, the allegations against the petitioners is that they after forming an unlawful assembly, entered into her house and started assaulting her husband with lathi and danda and when the informant went to rescue her husband accused Surendra Thathera assaulted on her thigh with hockey stick resulting she fell down and when Triloki Prasad, Devar Kashi Prasad and Ajay Kumar came for rescue all the accused persons caught the Devar of the informant and started assaulting him with lathi and danda indiscriminately causing injuries on his person. The husband of the informant sustained serious assault on his head and he became senseless. He was brought to the Government Hospital, Daudnagar wherefrom he was referred to Patna for better treatment. In course of quarrel the accused persons damaged T.V. and C.D etc. During the said occurrence gold made Mangal Sutra worth Rs. 8000/- was also snatched by Ramjee Thathera.

Accordingly, formal FIR was drawn up at



Daudnagar police station and investigation was handed over to the investigating officer who after completing investigation submitted charge sheet against the accused persons under the aforesaid sections and the learned S.D.J.M. after perusal of the case diary and the materials available passed the impugned order.

Submission is that there is case and counter case, no offence under section 307 of the I.P.C. is made out, only on the basis of the police report cognizance has been taken. The learned court below has not applied its judicial mind. From the injury report no offence under section 307 of the I.P.C. is made out and as such the impugned order is fit to be quashed.

The learned APP, on the other hand, submits that at the time of taking cognizance perusal of the police report is only required and the defence of the accused persons cannot be considered at that stage. The learned S.D.J.M. has rightly passed the impugned order and finding no illegality, incorrectness and impropriety Cr. Revision No. 47 of 2012/ 01 of 2014 of the petitioners was dismissed by order dated 20.09.2014 and both the orders are quite correct, proper and legal.

Having considered the submissions urged at the Bar, going through the record and noticing that after completing investigation charge sheet has been submitted against the



petitioners under the aforesaid sections and the learned S.D.J.M. after perusal of the case diary and the materials collected therein passed the impugned order against which Criminal Revision was filed and finding no merit in the Criminal Revision the same was dismissed. After perusal of both the impugned orders, it is manifest that there is no illegality, incorrectness or impropriety in the same; both orders do not require any interference by this Court.

In the result, finding no merit in this Criminal Miscellaneous, the same stands dismissed.

However, the petitioners are at liberty to raise all their submissions at the time of framing of charge and then the learned court below will consider the points raised by the petitioners and will pass appropriate order in accordance with law.

(Jitendra Mohan Sharma, J)

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