

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.28790 of 2011

Arising Out of PS.Case No. -245 Year- 2005 Thana -null District- SASARAM (ROHTAS)

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Najib Ahmad, late Latif Ahmad Moh-Adda Road, P.S- Sasaram Nagar, Dist-Rohtas

.... Petitioner/s

Versus

1. The State of Bihar
2. Syed Gayasuddin Ahmad, son of late Mohiuddin Ahmad R/O - Aoda Road, P.S- Sasaram (T) , Dist-Rohtas

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar Tiwary, Advocate.
For the O.P. No.2	:	Mr. Yogendra Kumar, Advocate.
For the State	:	Ms. Gulmar Begam, APP

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT
Date: 21-11-2017

Heard learned counsel for the petitioner,
learned counsel for he opposite party no.2 and the learned
counsel for the State.

2. This application, under Section 482 of the
Code of Criminal Procedure, is directed against the order dated
21.05.2011 passed in Sasaram (Town) P.S. Case No. 245 of 2005/
G.R. No. 816 of 2005, whereby the learned Judicial Magistrate
Ist Class, Sasaram, Rohtas, rejected the application of the
petitioner and one Sajid Kha for discharge.

3. The facts leading to this application are that



informant-opposite party no. 2 gave his written report on 01.07.2015 before the Officer-in-Charge of Sasaram (Town) Police Station to the effect that accused persons named in the F.I.R. including the petitioner started digging the foundation for constructing the house in his land then he made protest. Thereupon, hot talk was exchanged. Thereafter, Najib Ahmad (petitioner), Sajid Khan, Rasid Khan, Raja Babu, Najin, Asiya Praveen, Juhi surrounded him and started to cause assault. When Sultana Khatoon and Sadab Hussain, sister and nephew of the informant-opposite party no.2, came to save the informant then they were also assaulted through lathi.

On the basis of written report of informant-opposite party no. 2, Sasaram (Town) P.S. Case No. 245 of 2005 was instituted on 01.07.2005, under Sections 341 and 323/34 of the Indian Penal Code, against Najib Ahmad (petitioner), Sajid Khan, Rasid Khan, Najin and Asiya Praveen, but on investigation the police submitted the charge sheet only against petitioner and Sajid Khan submitting the final form against rest accused named in the F.I.R. On taking the cognizance of the offence against petitioner and Sajid Khan under Sections 323 and 341/34 of the Indian Penal Code, the petitioner filed the application on 13.02.2007 for discharge. On hearing both parties and perusal of



the materials available on record, the learned Judicial Magistrate Ist Class, Sasaram, Rohtas, dismissed the application of the petitioner and one Sajid Khan for discharge through the impugned order.

4. Learned counsel for the petitioner submits that, in fact, petitioner is Mutwali of Alay Nabi Wakf No. 705 situated at Sasaram and the land in dispute belongs the said Wakf. Only to grab the land the informant-opposite party no. 2 lodged Sasaram (T) P.S. Case No. 245 of 2005 against five persons named in the F.I.R. including the petitioner but the police submitted the charge sheet against the petitioner and one Sajid Khan for the offence under Sections 323 and 341/34 Indian Penal Code illegally without verifying the real fact. The learned Judicial Magistrate Ist Class, Sasaram, Rohtas, illegally dismissed the application of the petitioner and one Sajid Khan for discharge. Further submission is that at the time of alleged occurrence the petitioner was on his duty as Steno at Bhabua, situated 60K.M. away to the place of occurrence.

5. On perusal of the materials available on the record and the impugned order, I find no illegality in the impugned order amounting to abuse of the process of the court for interference in inherent jurisdiction under Section 482 of the



Code of Criminal Procedure.

6. Accordingly, this application is dismissed .

However, petitioner would be at liberty to take his defence as raised here in trial court at appropriate stage.

(Rajendra Kumar Mishra, J)

Bhardwaj/-

AFR/NAFR	
CAV DATE	
Uploading Date	04.12.2017
Transmission Date	04.12.2017

