

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.7537 of 2012

Arising Out of PS.Case No. -104 Year- 2011 Thana -null District-
WESTCHAMPARAN(BETTIAH)

- =====
1. Chandrika Tiwari, son of Late Sheo Tiwari
 2. Pramod Tiwary @ Ram Parkash Tiwari, son of Sri Chandrika Tiwari.
Nos.1 and 2 presently residing at village Fatehpur (Formerly was living in village Matkota) PO/PS Jogapatti, District- West Champaran.
 3. Harendra Dubey, son of Late Dipnarayan Dubey, all are resident of village- Dubwalia, Police Station- Jogapatti, District- West Champaran.
- Petitioners

Versus

1. The State of Bihar through Secretary, Home, Old Secretariat Building, harding Road, Patna.
 2. Vishnu Das @ Bhushan Shkula, son of Late Awatar Shukla- Chela (As claimed) Late Awadh Das, Mahanth, resident of Sri Ram Janki Hanuman Jee Mandir Fatehpur, Police Station- Jogapatti, District- West Champaran: Actually residing at V-P.O. Sareshma, P.S.- manjhaulia, District- West Champaran.
- Opposite Parties

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Appearance :

For the Petitioners : Mr. N. Kumar, Advocate
For the State : Mr. Ahmad Ali, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 03-07-2017

The petitioners have challenged the order taking cognizance dated 26.8.2011 passed by Chief Judicial Magistrate, Bettiah in Jogapatti P.S. case No.104 of 2011 (Trial No.3254 of 2011) whereby cognizance has been taken under Sections 188, 379, 420, 504 and 34 of the Indian Penal Code.

2. Learned counsel appearing on behalf of the petitioners submits that allegation levelled against the petitioners is that they have committed theft by cutting Mustard crop standing in a field of the Math situated in village Dubwalia and on the said land,



order passed under Section 144 of Cr.P.C. was operational; so this was violated by petitioners. Learned counsel for the petitioner submits that there is inherent absurdity in the allegation for the reason that the informant only a month prior to this alleged complaint had lodged Jogapatti P.S. Case No.76 of 2011 under Sections 427, 423 and 384 of I.P.C. alleging cutting of Masur crop from the same land. Now allegation in the present case is that the petitioners committed theft of Masur crop but three months time is taken in growing the crop; so it is highly improbable that again Masur crop will mature within a period of one month. Learned counsel for the petitioners submits that the said Math was the private Math of maternal grand father of the petitioners and civil litigation is also going on and at present First Appeal No.775 of 1980 filed by the petitioner no.1 is still pending before this Court. However, it is case that the order passed under Section 144 of Cr.P.C. was violated by the petitioners, i.e., the primary allegation but this complaint was not filed by any authority rather by a private individual. It is submitted that according to Section 195(1) of the Cr.P.C., the Court can not take cognizance of the offence under Section 188 of the Cr.P.C. except on the complaint in writing made by a public servant concerned or by some other public servant who is administratively subordinate, so besides this legal bar there is patent absurdity in the allegation. It is further submitted that



no prima facie case under Section 420 of I.P.C. is made out.

3. Having considered the aforesaid submission, learned counsel for Additional Public Prosecutor submits that there is no illegality in the order of cognizance.

4. Having considered the submissions of both sides, I find that the allegation levelled in the F.I.R. is that the petitioners cut Masur crop from the Math land while an order passed in a proceeding under Section 144 Cr.P.C. was operational but the complaint is filed by the complainant, who is not a public servant. Under Section 195 of the Cr.P.C. no court can take cognizance of the offence under Sections 172 to 188 of I.P.C. except on the complaint in writing filed by a public servant concerned or by some other public servant to whom he is administratively subordinate. Moreover, there appears absurdity or element of improbability that Masur crop standing in the same field cut away by accused persons again cut away second time within a month as no fresh crop can grow within a month.

5. In the allegation there is also complete absence of any ingredient of cheating.

6. So for the aforesaid reason, the impugned order taking cognizance in Jogapatti P.S. Case No.104 of 2011 (Trial No.3254 of 2011) pending in the court of C.J.M., Bettiah is hereby set aside as well as the subsequent criminal proceeding in this case.



7. Accordingly, this quashing petition is allowed.

(Arun Kumar, J)

N.H./-

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