

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.6192 of 2012

Arising Out of Complaint Case No. -283 Year-2010 District- EAST CHAMPARAN(MOTIHARI)

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1. Bhagwat Prasad S/O Chhotelal Prasad Resident Of Village- Inerwa Bhar, Police Station- Paharpur, District- East Champaran
 2. Bijay Prasad S/O Heera Nand Prasad Resident Of Village- Inerwa Bhar, Police Station- Paharpur, District- East Champaran
 3. Prabha Devi W/O Bachhan Deo Prasad Resident Of Village- Inerwa Bhar, Police Station- Paharpur, District- East Champaran
 4. Kaushila Devi W/O Bajrangi Prasad Resident Of Village- Inerwa Bhar, Police Station- Paharpur, District- East Champaran

.... Petitioner/s

Versus

1. The State Of Bihar
2. Gauri Shankar Prasad S/O Late Indrasan Prasad Resident Of Village- Inerwa Bhar, Police Station- Paharpur, District- East Champaran

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar No. 7
Mr. Anant Kumar Mishra
For the State : Mr. Amitesh Kumar

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 31-08-2017

This application under Section 482 of the Code of Criminal Procedure has been filed to quash the order dated 21.05.2011 passed by the learned Judicial Magistrate, 1st Class, Motihari, East Champaran in Trial No. 4688 of 2011 arising out of



Complaint Case No. 283 of 2010 whereby and whereunder the learned Magistrate finding prima facie case for the offence under Sections 323, 379 and 504 of the Indian Penal Code summoned the petitioners.

2. Heard both sides.

3. The Opposite Party No. 2 filed a complaint case on the file of C.J.M, Motihari, East Champaran alleging inter alia that on 09.02.2010 in the evening when he was returning from market after selling five quintals mustard, these petitioners intercepted the complainant and snatched of Rs. 15,000/- on pistol point. The petitioners after seeing the witnesses left the place of occurrence. In course of enquiry, three witnesses supported the allegation as made in the complaint petition and the learned Magistrate finding prima facie case has summoned the petitioners.

4. The learned counsel for the petitioners submits that the petitioners are agnates of the complainant. They are at litigating term for land dispute since before the alleged occurrence. The complainant has filed this case with false and frivolous allegation. There are material contradictions in the statement of the complainant and his witnesses and no case as alleged is made out against them. The complainant has filed the complaint case as counter blast to the police case lodged by the full brother of the



petitioner No. 1. The complainant, his family members and the witnesses, who have supported the complainant's case, had assaulted the full brother of the petitioner No. 1 for which Paharpur P.S. Case No. 17 of 2010 dated 21.01.2010 was lodged under Section 379, 324, 323 and other Sections of the Indian Penal Code by the brother of petitioner no. 1. The complainant in order to save his skin from the said offence has lodged the present case after two weeks of the said occurrence. The learned Magistrate has not considered the material contradictions in the statement of witnesses and has taken cognizance in mechanical manner without applying judicial mind and so, the order taking cognizance is fit to be quashed.

5. The learned APP for the State, on the other hand, opposed the submission.

6. On perusal of complaint petition, statement of witnesses examined at the time of enquiry, impugned order and counter affidavit of the Opposite Party No. 2, I find that the complainant and the petitioners are agnates. This fact has not been disputed by the Opposite Party No. 2 in their counter affidavit. I further find that there are material contradictions in the statement of witnesses examined at the time of enquiry. All the three witnesses have stated that both the parties are agnates and there were at inimical term on



account of land dispute. There are vital contradictions in the statement of witnesses on their presence at the time of occurrence. They have not supported the allegation of theft. The witnesses have stated that the complainant had disclosed them about the manner of occurrence. I further find that a police case vide Paharpur P.S. Case No. 17 of 2010 was lodged on 21.01.2010 on the fardbeyan of full brother of the petitioner no. 1, which was recorded at the hospital in his injured condition. The brother of the petitioner no. 1 in his fardbeyan has alleged that on 21.01.2010, the complainant, namely, Gauri Shankar Prasad and all the three witnesses, who have been cited in the complaint petition and some other accused persons assaulted the informant with intention to commit his murder. The witnesses of the present complaint case and the informant have been cited as accused in the police case lodged by the full brother of the petitioner no. 1 much earlier to the lodging of the complaint case by the opposite party No. 2. The prosecution of these petitioners in the above background and evidence on record appears to be malicious and it would be an abuse of process of Court.

7. In the facts and circumstances stated above, this criminal miscellaneous application is allowed and the order dated 21.05.2011 passed by the learned Judicial Magistrate, 1st Class, Motihari, East Champaran in Trial No. 4688 of 2011 arising out of



Complaint Case No. 283 of 2010 and the prosecution of these petitioners on that basis is hereby quashed.

(Sanjay Kumar, J)

ajay gupta/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.09.2017
Transmission Date	05.09.2017

