

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.21554 of 2015

Arising Out of PS.Case No. -7 Year- 2015 Thana -SAMASTIPUR COMPLAINT CASE District-
SAMASTIPUR

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1. Uday Chandra Choudhary. Son of Late Kamesh Choudhary @ Kameshwar Choudhary.
2. Prabhash Prabhakar @ Monu @ Prabhash Kr. Prabhakar. Son of Uday Chandra Choudhary. Both resident of Village - Badhauna, P.S.- Vidyapatinagar, District - Samastipur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Arvind Kumar Choudhary. Son of Basant Kumar Choudhary. Resident of Village - Badhauna, P.S.- Vidyapatinagar, District - Samastipur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rama Kant Sharma, Sr. Adv
& Mr. Lakshmi Kant Sharma, Adv
For the Opposite Party/s : Mr. Ram Sumiran Rai(App)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 24-04-2017 Heard Mr. Ramakant Sharma, learned senior counsel for the petitioners and Mr. Ram Sumiran Rai, learned APP for the State.

The present application has been filed for quashing the order dated 03.03.2015 passed by learned Judicial Magistrate, 1st Class, Dalsingsarai in C.R. No. 07 of 2015, whereby the process has been directed to be issued for the offences punishable under Sections 323, 384, 379, 504 and 452 of the Indian Penal Code.

Learned senior counsel for the petitioners submit



that the petitioners are agnates of the complainant and in the background of land dispute, the accusation was levelled and the complaint was filed on 03.01.2015 for the occurrence of 31.12.2014, whereas the petitioners side lodged Vidyapatinagar P.S. Case No. 02 of 2015 on 02.01.2015 with accusation for the offences punishable under Sections 341, 323, 504, 384, 379, 506/34 of the Indian Penal Code. Learned counsel for the petitioner has further submitted that the learned court below has not considered the nature of accusation and counter accusation. It has further been submitted by learned counsel for the petitioners that the petitioner no. 1, is a bank employee and on the alleged date of occurrence he was present in the Bank.

In view of this Court, at the stage of taking cognizance, the Magistrate is not supposed to consider the defence of the accused. Useful reference may be made to the case of State of Orissa Vs. Devendra Nath Padhi (2005) 1 Supreme Court Cases 568. Paragraph 23 reads as follows:

“23. As a result of aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. Satish Mehra's case holding that the trial court has powers to consider even materials which accused may produce at the stage of Section 227 of the Code has not been



correctly decided.”

Considering the fact that at the stage of exercise of jurisdiction under Section 190(1)(a) of the Code of Criminal Procedure, the court has to only see that prima facie case is made out or not as has been held by the Apex Court in the case of **Sonu Gupta Vs. Deepak Gupta & Ors.** reported in **2015(2) PLJR (S.C.) 321** , relevant portion whereof reads as follows:-

"7. Having considered the details of allegations made in the complaint petition, the statement of the complainant on solemn affirmation as well as materials on which the appellant placed reliance which were called for by the learned Magistrate, the learned Magistrate, in our considered opinion, committed no error in summoning the accused persons. At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence, or, in other words, to find out whether prima facie case has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor he is required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials will lead to conviction or not.

Moreover the impugned order was passed on



03.03.2015, but there is nothing on record to suggest the present stage of the proceeding.

In view of the above settled legal proposition, this Court is not inclined to interfere with the impugned order.

This application is, accordingly, disposed of with liberty to the petitioners to raise all the contentions at appropriate stage of the proceeding.

(Dinesh Kumar Singh, J)

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