

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.50153 of 2014

Arising Out of PS. Case No.-83 Year-2010 Thana- GOPALPUR District- Patna

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1. Binda Prasad @ Binda
 2. Kamta Prasad @ Bangali Rai Both sons of Sri Raja Ram Singh
 3. Ranjan Prasad S/o Binda Prasad @ Binda
 4. Santosh Prasad S/o Kamta Prasad @ Bangali Rai All are resident of Village Shahpur, P.S. - Gopalpur, District Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Naresh Kumar S/o late Sita Ram Singh R/o Village : - Shahpur, P.S. : - Gopalpur, District - Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Vishal Saurabh
For the Opposite Party/s : Mr. AMITESH KUMAR (APP)

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 13-10-2017

Heard learned counsel for the parties.

This petition under Section 482 of the Cr.P.C has been filed for quashing the order dated 03.01.2011 passed by learned Chief Judicial Magistrate, Patna in connection with Gopalpur P.S. Case No. 83 of 2010 by which cognizance under Sections 341, 323, 504/34 of the Indian Penal Code has been taken.

Briefly stated, the facts of the case is that on written complaint by Naresh Kumar, an FIR was registered giving rise to Gopalpur P.S. Case No. 83 of 2010, in which it has been alleged that Buffalo of opposite party no. 2 entered into the field of Binda Rai and when he went to bring his Buffalo then all the



accused persons started abusive language and assaulted him, his wife and his father and when they were trying to flee away the accused-petitioners caught hold of them and snatched earrings of his wife, and somehow they managed to escape.

It has been submitted by the learned counsel for the petitioners that no offence, as such, took place and the petitioners have been falsely implicated in this case as there is land dispute between the parties since, 2004 and a partition suit vide TPS No. 464 of 2004 is pending before the Civil Court, Patna.

After investigation the police has submitted chargesheet under Sections 341, 323, 504 read with Section 34 of the Indian Penal Code against the petitioners, however, Rajaram Singh father of petitioners has not been sent up by the police for trial.

On the basis of police paper, chargesheet, case diary and other evidence collected during investigation, the trial court took cognizance and issued summons against the petitioners for their appearance to face the trial.

At the time of taking cognizance, the trial court has to form a *prima facie* opinion on the basis of materials available on record whether any offence is made out against accused or not.



The defence of accused cannot be examined by the trial court at the time of taking cognizance. On the basis of materials available on record, the trial court has found *prima facie* case to be made out against the petitioners and High Court in its inherent jurisdiction cannot examine the sufficiency of evidence as the same is to be looked into by the trial court, as such this Court under its inherent jurisdiction is not inclined to interfere with the order dated 03.01.2011 taking cognizance against the petitioners.

However, liberty is granted to the petitioners to raise all the points raised in this petition as well as other issues available to them at the time of framing of charge in accordance with law.

With the aforesaid observation and liberty, this petition is disposed of.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A
Uploading Date	18.10.17
Transmission Date	18.10.17

