

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.25752 of 2013

Arising Out of PS.Case No. -525 Year- 2011 Thana -COMPLAINT CASE District- JAMUI

=====

1. Dhaneshwar Mahto @ Dhaneshwar Prasad S/O Sri Prabhu Mahto

2. Amirak Mahto S/O Sri Prabhu Mahto

3. Suresh Mahto @ Suresh Kumar S/O Sri Prabhu Mahto

All resident of village - Darkha, P.S.- Sikandara, Dist.- Jamui

.... Petitioners

Versus

1. The State of Bihar

2. Upendra Prasad Singh Son Of Late Jamuna Singh, resident Of Village- Karja,
P.S.- Sikandara, Distt.- Jamui

.... Opposite Parties.

=====

Appearance :

For the Petitioner/s : Mr. Bamdeo Pandey, Advocate

Mr. Jitendra Pandey, Advocate

For State : Mr. Jharkhandi Upadhyay, APP

For O.P. No. 2 : Mr. Harish Kumar, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 03-04-2017

Though this application was admitted vide order dated 26.09.2016, the matter has been listed under the heading “For Admission” Mr. Bamdeo Pandey, learned counsel appearing for the petitioners and Mr. Harish Kumar, learned counsel appearing for opposite party no. 2 submitted that the matter may be finally heard and disposed of.

2. With the consent of the parties, the application



filed under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') on behalf of three petitioners for quashing the order dated 07.02.2013 passed by the learned Judicial Magistrate, 1st Class, Jamui in Complaint Case No. 525 C of 2011 whereby finding a *prima facie* case to be made out against the petitioners summonses were issued under Sections 147, 149, 341 and 379 of the Indian Penal Code (for short 'IPC') has been taken up for hearing and disposal.

3. Learned counsel for the petitioners submitted that initially, on the basis of written report submitted by the informant Upendra Prasad Singh, Sikandra P. S. Case No. 218 of 2008 was registered under Sections 147, 149, 341, 323, 504, 506 and 379 of the IPC against the petitioners. However, on completion of investigation, the police found the accusation made against the petitioners to be false and, accordingly, a final report under Section 173(2) of the Cr.P.C was submitted by the investigating officer in the court of Magistrate recommending initiation of a proceeding under Sections 182 and 211 of the IPC against the informant. Since a protest petition was filed by the informant of the case during investigation, making allegation that the investigation was not fair and impartial while accepting the final report submitted by the police, the learned Magistrate directed the protest petition to be



registered as a complaint. He submitted that even though no witness has come forward to support the case of the informant during investigation, the learned Magistrate summoned the petitioners in the complaint case, which is malicious, vexatious and oppressive.

4. On the other hand, learned counsel appearing for opposite party no. 2 submitted that the witnesses supported the case of the prosecution during investigation pursuant to which the FIR was lodged by opposite party no. 2 against the petitioners, but since the police went in collusion with the accused persons, the opposite party no. 2 filed a complaint in the court of Chief Judicial Magistrate, Jamui. It is specifically stated in the complaint that when the complainant was coming home and as soon as he reached near his '*darwaja*', the petitioners of the present case and two others forced the complainant to stop motorcycle and on the point revolver, they snatched money and asked him to vacate the disputed land. He submitted that the complainant has fully supported the allegation in his statement on oath and his witnesses have also supported the case during inquiry conducted under Section 202 of the Cr.P.C.

5. I have heard learned counsel for the parties and perused the record.



6. At the outset, it is pertinent to note that though the learned Magistrate while passing the impugned order dated 07.02.2013 whereby summonses were issued against the petitioner observed that in course of inquiry the complainant and his witnesses have fully supported the allegations made in the complaint, the petitioners have not brought on record either the statement of the complainant recorded on oath or the statements of the witnesses recorded in course of inquiry conducted under Section 202 of the Cr.P.C.

7. However, the learned counsel for opposite party no. 2 has produced a copy of the statements of the complainant recorded under Section 202 of the Cr.P.C.. On perusal of the same, I find that he has fully supported the allegations made in the complaint. He has stated that the accused persons forced him to stop his motorcycle on the point of pistol and while snatching money from him, they threatened to vacate land.

8. In absence of the deposition of other witnesses led during enquiry conducted under Section 203 of the Cr.P.C., it is difficult for the Court to come to any conclusion regarding consistency or otherwise in their statements made before the Court.

9. There is no reason for this Court to doubt the legality of the order passed by the learned Magistrate. The



contention of the petitioners, which is not based on materials on record cannot be made a ground for setting aside a judicial order passed by a court of competent jurisdiction.

10. Accordingly, the application being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

Kanchan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.04.2017
Transmission Date	06.04.2017

