

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.40236 of 2013

Arising Out of PS.Case No. -27 Year- 2012 Thana -MAJORGANJ District- SITAMARHI

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1. Rajendra Singh Son Of Late Saryug Singh Resident Of Village-Barharwa, P.S.-Mejarganj, P.O.-Barharwa, District-Sitamarhi
 2. Manoj Kumar Singh @ Manoj Singh Son Of Rajendra Singh Resident Of Village-Barharwa, P.S.-Mejarganj, P.O.-Barharwa, District-Sitamarhi
 3. Santosh Kumar Singh Son Of Rajendra Singh Resident Of Village-Barharwa, P.S.-Mejarganj, P.O.-Barharwa, District-Sitamarhi

.... Petitioners

Versus

1. The State Of Bihar
2. Vikash Kumar Singh Son Of Raj Kishore Singh Resident Of Village-Barharwa, P.S.-Mejarganj, P.O.-Barharwa, District-Sitamarhi

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Ajay Kumar, Advocate.

For the Opposite Parties : Mr. Kanhaiya Kishore (APP)

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL ORDER

7 18-05-2017 The instant Criminal Miscellaneous has been filed for quashing the order dated 05.03.2013 passed by Sri Alok Kumar Pandey, the then S.D.J.M, Sadar, Sitamarhi in connection with Mejarganj P.S. Case No. 27 of 2012, G.R. No. 513 of 2012, Trial No. 3300 of 2013, whereby and whereunder, the learned S.D.J.M. has taken cognizance against the petitioners for the offences under sections 448, 323, 506, 379 and 504/34 of the I.P.C. and directed to issue summon against the petitioners.

Heard the learned counsel for the petitioners, the learned A.P.P. for the State and the learned counsel for the



Informant.

The informant (Opposite party no.2) gave written report to the S.H.O. Mejarganj on 10.03.2012 alleging therein that his sister had come to his house and then the petitioners entered into his house, taken away the golden chain of 10 grams and also taken away cash of Rs. 15,000/- and later on fled away.

The police after completing investigation submitted final form against the petitioners showing the same as the land dispute, but after considering the materials available in the case diary the learned S.D.J.M. passed the impugned order.

Submissions on behalf of the petitioners are that the petitioner no.1 is an old man and retired A.S.I under C.I.S.F. The opposite party no.2 is own nephew of petitioner as father of the informant is own brother of the petitioner no.1, namely Rajendra Singh. The petitioners have been implicated falsely. The opposite party no.2 has got criminal antecedent. Proceedings under sections 107 and 144 of the Cr.P.C. were also started between the parties. The Commandant of petitioner no. 1 had sent a letter to the Collector, Sitamarhi regarding possession of the petitioners and the Collector, Sitamarhi had directed the Circle Officer, Mejarganj to take immediate steps in respect to measuring the disputed plot at the earliest and erects the boundary in between plot no. 2419



and 2417. The father of the informant in absence of petitioner no.1 entered into his house and attempted on the wife of petitioner no.1 and also threatened to leave the house otherwise they will be murdered. The petitioner no.1 has also filed Complaint Case No. 430 of 2000 against Raj Kishore Singh and others. The petitioner no.1 has also lodged FIR against Raj Kishore Singh & others bearing Mejarganj P.S. Case No. 03 of 2013, Mejarganj P.S. Case No. 98 of 2012 and Mejarganj P.S. Case No. 186 of 2012 which are pending before the learned court below. Cognizance has already been taken against Raj Kishore Singh and others in all the cases mentioned above. The father of opposite party no.2 is a veteran criminal due to which the life and property of the petitioners are at danger. Without any merit the learned S.D.J.M. has passed the impugned order and as such the impugned order is fit to be set aside.

The learned A.P.P. and the learned counsel for the Informant (Opposite party no.2), on the other hand, submit that in the case diary there is sufficient materials. The informant in his further statement, vide paragraph-4 of the case diary, and the witnesses, namely, Renu Devi, Baby Devi, Ravi Kumar Singh, Prince Kumar Singh and Vijay Kumar Singh, all have supported the prosecution version, but inspite of that the police officer



submitted final form and as such the learned S.D.J.M. rightly by differing with the opinion of the police officer has passed the impugned order. At the time of taking cognizance the defence of the accused persons cannot be looked into rather the order has to be passed on the basis of the materials collected during investigation.

Having considered the submissions urged at the Bar, going through the FIR, impugned order and the Photostat copy of the case diary, it is manifest that during investigation all the witnesses, as stated above, have supported the prosecution version and the learned S.D.J.M. after considering all these materials available in the case diary has passed the impugned order which appears quite legal, proper and correct. At the time of taking cognizance the court is only required to see as to whether on the basis of the materials collected during enquiry/investigation sufficient materials have come or not to find out prima-facie case against the accused persons. In the instant case there is sufficient material in the case diary to proceed further against the accused persons.

In the result, finding no merit in this Criminal Miscellaneous the same is hereby dismissed and the impugned order is hereby confirmed.



However, the petitioners may be at liberty to raise all these points at the time of hearing on the point of charge.

(Jitendra Mohan Sharma, J)

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