

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.40942 of 2013

Arising Out of PS.Case No. -55 Year- 2010 Thana -BARACHATTI District- GAYA

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1. Ram Pravesh Thakur Son Of Sri Basudeo Thakur Resident Of Vill- Dhamana,
Ps.- Baracchati, Distt- Gaya

.... Petitioner/s

Versus

1. The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Tapeswar Sharma
Mr. S.C. Jaiswal

For the Opposite Party/s : Mr. Jharkhandi Upadhyay

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

C.A.V. JUDGMENT

Date: 01-08-2017

Heard learned counsel for the parties.

Petitioner, by means of this application under section 482 of the Code of Criminal Procedure, has invoked the inherent jurisdiction of this Court with prayer to quash the order dated 15.02.2012, passed by Additional Sessions Jusdge, Gaya in Barachatti P.S. Case No. 55 of 2010 corresponding to NDPS Case No. 5 of 2012, whereby cognizance has been taken against the petitioner for the offence under section 18(b) of the N.D.P.S. Act.

The contention of the learned counsel for the petitioner



is that no offence against the petitioner is disclosed and the present prosecution has been instituted with mala fide intention for the purposes of harassment. Petitioner and his villagers filed several applications (Annexures-3, 4 & 5) before the D.G.P., Bihar declare the petitioner innocent as he has been falsely implicated in the case. D.C.L.R., Sherghati also gave report (Annexure-6) to the effect that the land from where recovery has been made does not belong to the petitioner. The present case is an abuse of the process of the court, and as such, the impugned order of cognizance is fit to be quashed. Learned counsel in support of his submissions has placed reliance on a judgment of the Hon'ble Supreme Court reported in **(2004) Supreme Court Cases 766**.

Learned counsel appearing for the State opposes the application by contending that there are allegations against the petitioners and no ground for quashing the entire proceedings is made out.

From perusal of the material on record and looking into the facts of the case at this stage, it cannot be said that no offence is made out against the petitioners. All the submissions made at bar relates to the disputed questions of fact, which cannot be adjudicated upon by this Court in exercise of power conferred under section 482 Cr. P.C. Only a prima facie satisfaction of the Court about the



existence of sufficient ground to proceeding in the matter is required.

At this stage only prima facie case is to be seen in the light of the law laid down by Supreme Court in cases of ***R.P. Kapur Vs. State of Punjab, A.I.R. 1960 SC 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P. Sharma, 1992 SCC (Cr.) 192, Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283*** and recently in ***A.R.C.I. Vs. Nimra Cerglass Technics (P) Ltd. (2016) 1 SCC 348.***

The submissions made by the learned counsel for the petitioners call for adjudication on pure questions of fact which may be adequately gone into by the trial Court in this case. This Court does not deem it proper, and therefore cannot be persuaded to have a pre-trial before the actual trial begins. The disputed defence of the accused cannot be considered at this stage. The judgment of the Hon'ble Supreme Court, cited above, is on different set of facts as in that case judgment was passed in appeal where evidence was discussed, but in the present the matter is of cognizance where evidence has not been discussed. As such, the same is not applicable in the facts and circumstances of the present case. Further, the petitioners have got a right of discharge through a proper application for the said purpose and he is free to take all the submissions in the said discharge application before the trial Court. The prayer for quashing the order



taking cognizance is refused.

The application accordingly stands dismissed.

(Arvind Srivastava, J)

Manish/-

AFR/NAFR	NAFR
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