

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.44112 of 2014

Arising Out of Complaint Case No. -921 Year- 2013 Thana -Korha District- KATIHAR

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1. Ram Prasad Malakar Son of late Newalal Malakar
 2. Bikram Malakar Son of Ram Prasad Malakar
 3. Mantu Malakar Son of Ram Prasad Malakar
 4. Kanchan Devi W/o Bikram Malakar
 5. Payal Kumari D/o Bikram Malakar

Petitioner nos.-1 and 3 are resident of village- Bhangha, P.S.- Falka, District- Katihar and Petitioner nos. 2,4 and 5 are resident of village- Hariyabhir, Maltitola, Bishanpur, P.S.- Korha, District- Katihar.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Reena Devi W/o Anil Malakar, R/o Hariyabhir, Rampur, P.S.- Korha, District- Katihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Mishra, Advocate
For the Opposite Party/s : Mr. M. Dayal, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 01-09-2017

Heard both sides and perused the record.

2. This criminal miscellaneous application under section 482 of the Code of Criminal Procedure has been filed to quash the order dated 27.01.2014 passed by the learned Judicial Magistrate 1st Class, Katihar in Complaint Case No. 921 of 2013 whereby and whereunder the learned Magistrate finding *prima facie* case for the offences under sections 323, 379/34 of the Indian Penal Code, ordered for issuance of summons against the petitioners.



3. The learned counsel for the petitioners submits that petitioner no. 1 is the cousin brother-in-law of the husband of opposite party no. 2. There is a land dispute between two parties and on account of land dispute, the present case has been lodged with false and frivolous allegation. There are contradiction in the statement of complainant on solemn affirmation and her witnesses. This case has been lodged maliciously to counter the Police case bearing Korha Police Station Case No. 77 of 2013 lodged against the husband of opposite party no. 2. The husband of opposite party no. 2 had assaulted the daughter of petitioner no. 2, causing grievous injuries to her, for which, the aforesaid police case was registered for the offences under sections 341, 323 and 325 of the Indian Penal Code. The complainant in order to save her husband, has filed the complaint case only to put pressure on the petitioners to get the matter compromised. The learned Magistrate without applying judicial mind, has passed the order in mechanical manner and so, the same is fit to be quashed.

4. The learned counsel for the complainant as well as learned Additional Public Prosecutor opposed the submission.

5. On perusal of complaint petition and annexures available on record, I find that all the petitioners have been named in the complaint petition with specific allegation that they formed an



unlawful assembly, entered into the house of the complainant, abused and assaulted her as well as her daughter and also snatched her ear ring and took away the cash amount of Rs.17,000/- from her house. The complainant on her solemn affirmation and her three witnesses in course of enquiry, have supported the allegation as made in the complaint petition. The learned Magistrate found *prima facie* case and accordingly, summoned the petitioners. So far counter case is concerned, it was lodged after filing of the complaint petition of the opposite party no. 2. The said F.I.R. was lodged after delay of 12 days. The petitioners have will have opportunity to raise their defence as regards enmity on account of land dispute and other defence at the time of trial.

6. In the facts stated above, I do not find any illegality in the impugned order requiring any interference under inherent jurisdiction of this Court under section 482 of the Code of Criminal Procedure.

7. Accordingly, this petition is dismissed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	10.09.2017
Transmission Date	10.09.2017

