

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.44417 of 2013

Arising Out of PS.Case No. -63 Year- 2012 Thana –Babu Barhi District- MADHUBANI

- =====
1. Kumarjee Jha S/O Bauajee Jha Resident of Village Bela, P.S- Babubarhi, District- Madhubani.
 2. Gobind Jha S/O Bauajee Jha Resident of Village Bela, P.S- Babubarhi, District- Madhubani.
 3. Gopaljee Jha S/O Bauajee Jha Resident of Village Bela, P.S- Babubarhi, District- Madhubani.
 4. Bauajee Jha S/O Late Maheshwar Jha Resident of Village Bela, P.S- Babubarhi, District- Madhubani.
 5. Jibendra Jha S/O Late Mahikant Jha Resident of Village Bela, P.S- Babubarhi, District- Madhubani.
 6. Amala Devi W/O Bauajee Jha Resident of Village Bela, P.S- Babubarhi, District- Madhubani.
 7. Bandna Devi W/O Gobind Jha Resident of Village Bela, P.S- Babubarhi, District- Madhubani.
 8. Rekha Devi W/O Kumar Jee Jha Resident of Village Bela, P.S- Babubarhi, District- Madhubani.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Indra Mohan Jha S/O Late Jagdish Jha Village Bela, P.S- Babubarhi, District- Madhubani.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Arun Kumar Prasad, Adv.
For the State : Dr. Mayanand Jha, APP
For Opposite Party No.2 : Mr. Ratnakar Jha, Adv.
Mr. Mritunjay Kumar, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 25-04-2017

This application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed by the petitioners for quashing of the order dated 14.08.2013 passed by the learned 3rd Additional Sessions Judge, Madhubani in Cr. Revision No. 753 of 2012 by which the revision petition filed by the petitioners



against the order dated 01.10.2012 passed by the learned Chief Judicial Magistrate, Madhubani in Babu Barhi P.S.Case No. 63 of 2012 has been dismissed.

2. By the aforesaid order dated 01.10.2012, the learned Chief Judicial Magistrate had taken cognizance of the offence punishable under Sections 147, 341, 323 and 504 of the Indian Penal Code against the petitioners and summoned them to face trial differing with the police report submitted under Section 173(2) of the Cr.P.C.

3. Initially the informant had filed a complaint case in the court of Chief Judicial Magistrate, Madhubani on 27.03.2012 vide Complaint Case No. 383 of 2012 against the petitioners, which was sent to the police under Section 156(3) of the Cr.P.C. for investigation pursuant to which Babu Barhi P.S.Case No. 63 of 2012 was registered on 10.04.2012 for the offences punishable under Sections 147, 148, 149, 120-B, 323, 341, 324, 379, 380 and 452/34 of the Indian Penal Code.

4. It is alleged in the complaint that on 21.03.2012 while the complainant was cutting bamboo standing on his land, the accused Kumarjee Jha forbade him to do so. When the complainant stated that the bamboo in question was standing on his land, the accused Kumarjee Jha started abusing him and thereafter all the



accused persons being variously armed entered into his house, abused and assaulted him mercilessly whereafter his son Prasannji Jha intervened, who was also assaulted by them. When Suman Kumar Jha and Amar Kumar Jha came to the rescue of the son of the complainant, they were also assaulted by the accused persons. It is further alleged that all the accused persons conspired together, entered into his house and damaged several household articles. The complainant alleged that when he went to the police station for institution of FIR, the written statement was not received whereafter he sent the substance of accusation to the Superintendent of Police also by registered post but no FIR was registered.

5. After the aforesaid complaint was sent to the police for investigation, the Investigating Officer recorded the statements of several witnesses under Section 161(3) of Cr.P.C. and on completion of investigation he came to the conclusion that a false accusation was made against the accused persons. Accordingly, the Investigating Officer submitted his report under Section 173(2) of the Cr.P.C. vide Final Report No. 95 of 2012 dated 31.05.2012 in the court of the Chief Judicial Magistrate, Madhubani.

6. A perusal of the police report would make it evident that the Investigating Officer had made a separate report to the court of Chief Judicial Magistrate for initiating a proceeding under Sections



182 and 211 of the Indian Penal Code for launching false prosecution against the accused petitioners.

7. On perusal of the materials available in the case diary and the police report, the learned Chief Judicial Magistrate vide order dated 01.10.2012 took cognizance of the offence against the accused persons and summoned them to face trial.

8. The aforesaid order dated 01.10.2012 was challenged by the petitioners in revision before the court of Sessions vide Cr. Revision No. 753 of 2012. However, the said revision application has also been dismissed vide impugned order dated 14.08.2013 holding that there is no irregularity or impropriety in the order passed by the learned Chief Judicial Magistrate.

9. Being aggrieved by the aforesaid order dated 14.08.2013, the petitioners have preferred the present application under Section 482 of the Cr.P.C.

10. It is contended on behalf of the petitioners that the court of Magistrate and the Sessions court have failed to appreciate the materials collected during investigation. It is contended that there was no material on record on the basis of which the learned Chief Judicial Magistrate could have differed with the police report submitted under Section 173(2) of the Cr.P.C.

11. Per contra, learned counsel for the informant submitted



that the instant application under Section 482 of the Cr.P.C. would not be maintainable as it amounts to second revision which is barred under Section 397(3) of the Cr.P.C.. He submitted that the learned Chief Judicial Magistrate has not exceeded his jurisdiction in differing with the police report rather it is always open for the Magistrate either to agree with the police report or to differ with it on the basis of materials available on record. He contended that the revisional court has rightly dismissed the revision application filed by the petitioners and there is no other legal ground available to the petitioners on the basis of which the present application can be allowed.

12. Dr. Mayanand Jha, learned Additional Public Prosecutor appearing for the State, after going through the case diary, submitted that apart from the informant no other witness had supported the case of the prosecution in course of investigation. He contended that the final report was submitted by the police on the basis of statements of several witnesses recorded during investigation, who all had stated that the instant case has been launched in retaliation to Babu Barhi P.S.Case No. 45 of 2012 instituted by one of the accused of the present case. He contended that the entire prosecution case rests on the statement of the informant alone.

13. I have heard learned counsel for the parties and carefully



perused the record including the case diary of Babu Barhi P.S.Case No. 63 of 2012.

14. It would be evident from perusal of the order of the learned Chief Judicial Magistrate that he has differed with the police report on the basis of statements of witnesses Sudhir Paswan, Sukan Ram and Ram Prakash Yadav, recorded in paragraphs 6, 8 and 9 of the case diary. I have scrutinized the statements of these witnesses as also the statement of one Hari Narayan Yadav and the findings of the Supervising Officer. I find that in these three paragraphs of the case diary the witnesses have categorically stated that the instant case had been instituted in retaliation to Babu Barhi P.S.Case No. 45 of 2012. They have also stated that the complainant has filed the instant case in order to defend himself from the aforesaid Babu Barhi P.S.Case No. 45 of 2012. I further find that though in the FIR the informant has alleged that the accused persons mercilessly assaulted him and his family members but there is no medical evidence to support such allegation in the case diary.

15. Learned counsel for the State has correctly pointed out that besides the informant there is no other witness to support the allegations made in the complaint. Even his family members have not come forward to support his version.

16. Under the circumstances noted above, I am of the



opinion that the learned Chief Judicial Magistrate has completely failed to appreciate the materials on record while summoning the petitioners to face trial for the offences mentioned above. The order passed by the learned Chief Judicial Magistrate is erroneous and perverse as the statements given by witnesses during investigation exonerating the petitioners have been misinterpreted in order to summon the petitioners while differing with the police report. In the opinion of this Court, the revisional court was also not correct in not interfering with such a perverse order.

17. So far as the contention of the informant that the present application under Section 482 of the Cr.P.C. would not be maintainable is concerned, suffice it to say that the law is well settled that while exercising inherent jurisdiction of this Court under Section 482 of the Cr.P.C., nothing shall be deemed to limit or affect the inherent powers of the High Court to make such order as may be necessary to give effect to any order under Cr.P.C. or to prevent abuse of the process of the court or otherwise to secure the ends of justice. The inherent power under Section 482 of the Cr.P.C. is different from the power of revision under Section 397 of the Cr.P.C. Therefore, in spite of bar under Section 397(3) of the Cr.P.C. for second revision, a petition under Section 482 of the Cr.P.C. would be maintainable in view of the ratio laid down by the Hon'ble Supreme



Court in *Krishnan & Anr Vs. Krishnaveni & Anr [(1997) 4 SCC 241* and *Madhu Limaye Vs. The State of Maharashtra [(1977) 4 SCC 551]*.

18. For the reasons stated above, the impugned order dated 14.08.2013 passed by the learned 3rd Additional Sessions Judge, Madhubani in Cr. Revision No. 753 of 2012 by which the revision petition filed by the petitioners against the order dated 01.10.2012 passed by the learned Chief Judicial Magistrate, Madhubani in Babu Barhi P.S.Case No. 63 of 2012 has been dismissed is set aside. Consequently, Babu Barhi P.S.Case No. 63 of 2012 and the entire proceeding arising therefrom are also quashed.

19. The application stands allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	26-04-2017
Transmission Date	26-04-2017

