

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.51336 of 2013

Arising Out of PS.Case No. -204 Year- 2012 Thana -BAGHA District-
WESTCHAMPARAN(BETTIAH)

- =====
1. HARENDRA YADAV, S/O LATE MAHARAJ YADAV, RESIDENT OF VILLAGE- SHASTRINAGAR, P.S.- BAGAHA, DISTRICT- WEST CHAMPARAN
 2. DINESH YADAV, SON OF HARENDRA YADAV, RESIDENT OF VILLAGE- SHASTRINAGAR, P.S.- BAGAHA, DISTRICT- WEST CHAMPARAN
 3. BADHU YADAV @ BARHU YADAV, SON OF HARENDRA YADAV RESIDENT OF VILLAGE- SHASTRINAGAR, P.S.- BAGAHA, DISTRICT- WEST CHAMPARAN
 4. VIKASH YADAV, SON OF HARENDRA YADAV, RESIDENT OF VILLAGE- SHASTRINAGAR, P.S.- BAGAHA, DISTRICT- WEST CHAMPARAN
 5. SHANTI DEVI, W/O HARENDRA YADAV, RESIDENT OF VILLAGE- SHASTRINAGAR, P.S.- BAGAHA, DISTRICT- WEST CHAMPARAN
 6. KIRAN DEVI, W/O DINESH YADAV, RESIDENT OF VILLAGE- SHASTRINAGAR, P.S.- BAGAHA, DISTRICT- WEST CHAMPARAN
 7. SHRIMATI KUMARI, W/O HARENDRA YADAV, RESIDENT OF VILLAGE- SHASTRINAGAR, P.S.- BAGAHA, DISTRICT- WEST CHAMPARAN
 8. KUNTI DEVI, W/O BADHU YADAV, RESIDENT OF VILLAGE- SHASTRINAGAR, P.S.- BAGAHA, DISTRICT- WEST CHAMPARAN

.... PETITIONER/S

VERSUS

THE STATE OF BIHAR

.... OPPOSITE PARTY/S

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Appearance :

For the Petitioner/s	:	Mr. R.S. Sahay, Advocate.
For the O.P.	:	Mr. O.P. Pandey, Advocate.
	:	Mr. C. Jawahar, APP.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

Date: 18-09-2017

Heard learned counsel for the petitioners and the
learned counsel for the State.

2. This application, under Section 482 of the Code of



Criminal Procedure, is directed against the order dated 30.07.2012 passed in Bagaha P.S. Case No. 204 of 2012/ G.R. No. 859 of 2012, whereby the learned Additional Chief Judicial Magistrate, Bagaha, West Champaran, took the cognizance for the offence under Sections 504 and 427 of the Indian Penal Code, against the accused-petitioners, while on investigation the police submitted the charge sheet only against accused-petitioner no. 2, Dinesh Yadav, under Sections 504 and 427 of the Indian Penal Code, and submitted the final form against accused-petitioner nos. 1, 3, 4, 5, 6, 7 and 8.

3. The facts leading to this application is that one Hardeo Prasad Yadav, gave his written report before the Officer-in-Charge of Bagaha Police Station, on 25.06.2012, to the effect that on 22.06.2012, at about 9 A.M., Harendra Yadav (petitioner no. 1), Dinesh Yadav (petitioner no. 2), Badhu Yadav @ Barhu Yadav (petitioner no. 3) and Vikash Yadav (petitioner no. 4) dashed through bullock cart of stair of latrine and tanki of the informant with intention to cause damage, in which, he suffered loss of Rs.50,000. When he went to the house of the petitioners and made complaint to Harendra Yadav (petitioner no. 1) then he did not take any heed and threatened him. In the meantime, Dinesh Yadav (petitioner no. 2), Badhu Yadav @ Barhu Yadav (petitioner no. 3) and Vikash Yadav (petitioner no. 4), Shanti Devi (petitioner no. 5), Kiran Devi (petitioner no. 6),



Shrimati Kumari (petitioner no. 7) and Kunti Devi (petitioner no. 8) reached there and started to abuse him. At that time, Dinesh Yadav (petitioner no. 2) took cash of Rs.6050/-. On the basis of aforesaid written report, Bagaha P.S. Case No. 204 of 2012 was instituted on 25.06.2012, under Sections 341, 323, 427, 379 and 504/34 of the Indian Penal Code, against the accused-petitioners. After investigation, the police submitted charge sheet against Dinesh Singh (petitioner no. 2) under Sections 504 and 427 of the Indian Penal Code, and submitted the final form against rest petitioners, but the learned Additional Chief Judicial Magistrate, Bagaha, West Champaran, took the cognizance for the offence under Sections 504 and 427 of the Indian Penal Code, against all accused-petitioners differing with the final form submitted by the Investigating Officer against petitioner nos. 1, 3, 4, 5, 6, 7 and 8.

4. Learned counsel for the petitioners submits that the petitioners have been named as accused in the F.I.R. but the allegation has been made against accused-petitioner nos. 1 to 4 for damaging the stair and tanki of latrine of informant, Hardeo Prasad through bullock cart with specific allegation of snatching cash of Rs.6050/- by accused-petitioner no. 2 with general allegation of abusing him by all accused-petitioners. It would appear to the case diary that the witnesses in paragraphs 6, 7, 8, 14, 15 and 16 of the case



diary have stated about scuffle in between Dinesh Yadav (accused-petitioner no.2) and informant, Hardeo Prasad Yadav and they have not disclosed the name of other accused-petitioners participating in the occurrence and police also submitted the final form. The learned Additional Chief Judicial Magistrate, Bagaha, West Champaran, illegally took the cognizance for the offence under Sections 504 and 427 of the Indian Penal Code, against all accused-petitioners differing with the final form submitted by the Investigating Officer against accused-petitioner nos. 1, 3, 4, 5, 6, 7 and 8.

5. On the other hand, learned A.P.P. appearing for the state submits that there is no illegality in the impugned order taking cognizance of the offence under Sections 504 and 427 of the Indian Penal Code against the accused-petitioners but conceded that all the witnesses, in course of investigation, have stated about damaging the stair and tanki of latrine of the informant and abusing him by Dinesh Yadav (petitioner no. 2).

6. On perusal of the case diary, it is apparent that all the witnesses, namely, Binayak Yadav, Promod Yadav, Surendra Yadav, Uma Yadav, Kamlesh Yadav and Rajendra Yadav, whose statement, under Section 161 Cr.P.C., have been detailed in paragraphs 6, 7, 8, 14, 15 and 16 in the case diary, have stated about dashing the stair and tanki of latrine of the informant by Dinesh



Yadav (petitioner no. 2) and abusing him. None witnesses have stated about rest of the accused-petitioners. As such, the impugned order dated 30.07.2012 passed in Bagaha P.S. Case No. 204 of 2012/ G.R. No. 859 of 2012 taking cognizance of the offence under Section 504 and 427 of the Indian Penal Code against accused-petitioner nos. 1, 3, 4, 5, 6, 7 and 8 appears to abuse of the process of the court.

7. In the result, the order dated 30.07.2012 passed in Bagaha P.S. Case No. 204 of 2012/ G.R. No. 859 of 2012 taking the cognizance of the offence under Sections 504 and 427 of the Indian Penal Code is hereby quashed in respect to only accused-petitioner nos. 1, 3, 4, 5, 6, 7 and 8, namely, Harendra Yadav, Badhu Yadav @ Barhu Yadav, Vikash Yadav, Shanti Devi, Kiran Devi, Shrimati Kumari and Kunti Devi. This application is allowed partly in respect to only aforesaid accused petitioner nos. 1, 3, 4, 5, 6, 7 and 8.

(Rajendra Kumar Mishra, J)

Bhardwaj/-

AFR/NAFR	
CAV DATE	
Uploading Date	22.09.2017
Transmission Date	22.09.2017

