

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.18345 of 2012

Arising Out of PS.Case No. -0 Year- null Thana -null District- WESTCHAMPARAN(BETTIAH)

- =====
1. Alam Mian, s/o late Aziz Mian
 2. Sultana Parveen w/o Alam Mian

Both resident of village- Narainapur, P.S.- Ramnagar, District- West Champaran

.... Petitioner/s

Versus

1. The State of Bihar
2. Abdul Kalam, s/o late Abdul Rahman, resident of village- Narainapur, P.S.-
Ramnagar, District- West Champaran

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Vijay Kumar Singh, No. 1, Advocate.

For the State : Mr. Subhash Chandra Mishra, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 14-07-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 12.4.2012 passed by the Sub Divisional Judicial Magistrate, Bagaha (West Champaran), in Complaint Case No. C-121 of 2011, Trial No. 5023 of 2012 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioners for the offence under Sections 436/34 of the Indian Penal Code.

2. Heard learned counsel for the petitioners and State.

3. It has been submitted that house of the informant was burnt due to current of high-tension wire for which the informant got compensation from the government which is evident from



Annexure-5A. It has further been submitted that news item was also published regarding burning of the house of the informant due to high-tension wire which has been enclosed as Annexure-4 and the same is the cutting of newspaper showing that compensation amount has already been paid to the informant.

4. The police after investigation, has submitted Final Form in the case as a mistake of fact and, thereafter, on the basis of protest petition filed by the informant, the learned Magistrate proceeded for enquiry under Section 202 Cr. P.C. and passed the impugned order in which he has found *prima facie* case against the petitioners for the offence under Section 436/34 of the Indian Penal Code.

5. Notice has been issued to the opposite party No. 2 but none has turned up on calls.

6. Learned Additional Public Prosecutor has appeared.

7. The lower court records has been called for which has been received.

8. From perusal of the lower court record it appears that complainant Abdul Kalam in his Solemn Affirmation and other three witnesses examined during enquiry, are not the eye witnesses of the case. They all have stated that all of sudden fire took place in the



house of the complainant and, thereafter, he saw both the petitioners running away from the hut of the complainant.

9. The complainant in the Solemn Affirmation during enquiry has admitted that there is old enmity with the petitioner on account of land dispute. He has also admitted in Solemn Affirmation to a court question that while he was taking rest in his room, he saw fire in the hut of back side. There was electric wire at the distance of five meters from the place of occurrence. He has also admitted to a court question that he has dispute with the accused persons for a pathway (*'Rasta'*.)

10. In such circumstances, this Court is of the view that learned Magistrate has without properly appreciating the Solemn Affirmation of the complainant and the statement of three witnesses passed the impugned order on the basis of protest-cum-complaint petition.

11. From Annexure-5 and 5A filed by these petitioners, it is apparent that the complainant himself has filed a petition in the Circle Office, Ramnagar, on 5.7.2010 stating therein that about 12 O clock his thatched house has been burnt for which he made a request for compensation amount. A report was also sent by the Karamchari to the Circle Officer, Ramnagar (Annexure-5A) for payment of the said compensation amount to the complainant. The



complainant has not stated in the aforesaid petition before the C.O. that his hut was burnt by these petitioners.

12. The police after filing of the case concluded the investigation and submitted Final Form saying that the allegation has been found not true against the petitioners and the petitioners were not sent up for trial.

13. As such, from the facts of the case, it appears that the impugned order passed by the learned Magistrate on the basis of enquiry under Section 202 Cr. P.C., is totally mechanical in nature, without any sufficient material to show that these petitioners had burnt the hut of the complainant.

14. Therefore, the impugned order dated 12.4.2012 passed by the Sub Divisional Judicial Magistrate, Bagaha (West Champaran), in Complaint Case No. C-121 of 2011, Trial No. 5023 of 2012 including the entire Proceeding against the petitioners is hereby quashed.

15. This Cr. Misc. application is accordingly allowed.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	AFR
CAV DATE	N.A
Uploading Date	27/07/2017
Transmission Date	27/07/2017

