

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.36920 of 2013

Arising Out of PS.Case No. -134 Year- 2013 Thana -BETTIAH CITY District-
WESTCHAMPARAN(BETTIAH)

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1. Dwarika Sah @ Dwarika Prasad S/O Late Briksha Sah R/O Vill.-Senwariya,
P.S.-Kangali, District-W. Champaran

.... Petitioner/s

Versus

1. The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Aditya Nath Jha

For the Opposite Party/s : Mr. Uday Pratap Singh

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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 16.07.2013, passed by the Chief Judicial Magistrate, Bettiah, West Champaran, in G.R. Case No. 757 of 2013 arising out of Bettiah Town P.S. Case No. 134 of 2013, whereby cognizance has been taken against the petitioner for the offence under sections 147, 149, 323, 354 and 504 of the Indian Penal Code.

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. In this case after investigation, police submitted final form (Annexure-2) finding the case not true. Petitioner and informant are agnates and there is admitted land dispute. Petitioner had acted as one of the Panch in a Panchayati (Annexure-3) wherein matter was decided against the informant, and in retaliation the present false case has been lodged. On the alleged date of occurrence, petitioner was in a training camp which is evidence from Annexure-4.

Learned counsel appearing for the State opposes the application by contending that there are allegations against the petitioner 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 petitioner. All the submissions made at bar relates to the disputed question 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 submission made by the learned counsel for the petitioner 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. Moreover, the petitioner has 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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