

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.41757 of 2013

Arising Out of PS.Case No. -14 Year- 2007 Thana -KADAMKUAN District- PATNA

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1. Tulika Verma Wife Of Manoj Kumar D/O Birendra Nath Sharan, At P.O.-Arraria, District-Arraria
 2. Birendra Nath Sharana Son Of Late Rameshwar Sharan At P.O.-Arraria, District-Arraria
 3. Narendra Nath Srivastava Son Of Late Ramandan Srivastava Nageshwar Colony Bakarganj, Patna
 4. Santosh Kumar Son Of Sudhir Kumar Boring Road, Patna C/O Ahilya Rani, Kavi Raman Path, P.S.-Budha Colony Patna
 5. Laljee Kumar Son Of Ram Prasad Borind Road, Patna C/O Ahilya Rani, Kavi Raman Path, P.S. -Budha Colony Patna

.... Petitioner/s

Versus

1. State Of Bihar
2. Manoj Kumar Son Of Late Bindeshwari Verma Resident Of Village Bahpura, P.S.-Bihta, District-Patna At Present Residing Beside Lane Of Kushwaha Panchayat Bhawan, Ward No.-8, Saguna Mainpura West Danapur Cantt, District-Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 26-04-2017

The present petition has been filed for quashing the order dated 10-01-2011 passed by the learned Sessions Judge, Patna whereby and whereunder, the learned Court has rejected the Criminal Revision No. 938 of 2009 filed on behalf of the petitioners challenging the order dated 04-09-2009 passed by Sri Umesh Kumar, Judicial Magistrate-Ist Class, Patna whereby and whereunder the learned court has rejected the petition filed under Section-239 of the Cr.P.C. in Kadamkuan P.S. Case No. 14 of 2007.

Heard learned counsel appearing for the petitioner and the State.



It has been submitted on behalf of the petitioner that instant case is totally malicious prosecution lodged by the opposite party No. 2 (husband) against petitioners who are wife and other family members of the wife of opposite party No. 2 as a counter blast of Danapur P.S. Case No. 137 of 2006 as well as Maintenance Case No. 43 of 2006 filed against opposite party No. 2 by the wife (petitioner No. 1). Notice was issued to opposite party No. 2 in this case which was validly served but none appeared on behalf of opposite party No. 2. Learned APP has appeared.

Counsel for the petitioners has submitted that as per written report, the entire occurrence took place in the room of Rampyari Kunwar Dharmashala where the informant was living with his wife. But during investigation, the statement of independent witnesses was recorded in paragraphs-22 and 23 of the C.d. in which they clearly spoke that no such occurrence took place inside the Dharmshala. It is further stated that court below has failed to appreciate that in paragraphs-29, 30 & 31 of the case diary, the statement of Manager and other employees of Dharmshala was recorded and they have categorically stated that no such occurrence has taken place as alleged in the written report.

Counsel for the petitioners further submitted that petitioner Nos. 3,4 & 5 have not committed any offence inside



the Dharmsala rather they have been falsely implicated because the petitioner Nos. 4 & 5 are witnesses in the case lodged by petitioner No. 1 against the informant (opposite party No. 2) Petitioner No. 3 is own relative of Tulika and has been falsely implicated in this case.

It is an admitted position that earlier a petition filed u/S 239 Cr.P.C. by the petitioners was rejected by the Judicial Magistrate vide order dated 04-09-2009. The petitioners thereafter, preferred revision application before the learned Sessions Judge, Patna which was rejected by order dated 10-01-2011 passed in Cr. Rev. No. 938 of 2009. This application has been filed after rejection of the revision application filed by the petitioner.

This Hon'ble Court in a decision reported in **2010(1) PLJR 191 (Bijay Kumar Bhagat @ Bijay Vs. The State of Bihar & Ors.)** has held as follows:

“Generally a second revision or second revision in the garb of a quashing application u/S 482 is barred unless the finding of the court below is perverse, unwarranted or bad”.

In the instant case, after looking into the fact it appears that petitioner No. 1 is wife of opposite party No. 2 who has earlier filed a case bearing Danapur P.S. Case No. 137 of 2006 as well as Maintenance Case No. 43 of 2006 against her husband (opposite party No. 2) prior to filing of this case by the



husband (opposite party No. 2) against the wife (petitioner No. 1) and her other family members with vague allegations. The manner of occurrence has not been supported by the witnesses during investigation before the police. The employees and manager of the Dharmshala have also not supported the allegation against the petitioners as mentioned in the written report.

Therefore, this court has no hesitation in holding that continuance of the criminal proceeding against the petitioners is complete abuse of the process of the court and the instant case filed by opposite party No. 2 is totally malicious prosecution.

Hence, the impugned order dated 10-01-2011, along with entire criminal proceeding against these petitioners is hereby quashed.

This Criminal Miscellaneous Application is, accordingly, allowed.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

