

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.41739 of 2013

Arising Out of PS.Case No. -216 Year- 2010 Thana -BHAGALPUR KOTWALI District-
BHAGALPUR

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1. Deepak Kumar Son Of Lte Surendra Prasad Sah, Resident Of Girdhari Sah
Lane, P.S.-Kotwali, District-Bhagalpur

.... Petitioner/s

Versus

1. The State Of Bihar Null Null
2. Anita Devi Wife Of Devan Yadav Gaurachowki, P.S.-Kajraili, District-
Bhagalpur

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sandeep Kumar, Advocate
Mr. Praveen Kumar, Adv.

For the Opposite Party (State) : Mr. M. Dayal, APP.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 13-04-2017

The present petition has been filed for quashing the order dated 31-08-2010 passed by the learned Chief Judicial Magistrate, Bhagalpur in Kotwali P.S. Case No. 216 of 2010, by which and whereunder, the learned Magistrate took cognizance against the petitioner for the offence under Sections-323, 504, 427, 379 of the Indian Penal Code.

Heard learned counsel for the parties.

It has been submitted on behalf of the petitioner that police after investigation did not file charge sheet against the petitioner. The petitioner has been made accused in this case because the petitioner is social activist and raised objection about the encroachment made by



the informant and other vegetable sellers and was actively involved in getting removed the encroachment.

The C.D. has been received.

Learned APP has after looking into the C.D. stated that suspicion has been raised against this petitioner by the witnesses. He has submitted that police did not file charge sheet against the petitioner after investigation.

Learned counsel for the petitioner has relied upon a judgment reported in AIR 1992 (SC) 604 (The State of Haryana Vs Ch. Bhajanlal & Ors.) and has argued that continuance of this criminal case against the petitioner is a malicious prosecution because having been social activist, he used to always raise objection against the encroachments made by the informant and others.

From perusal of C.D. as well as allegation in the fardbyan, this court finds that there is no specific allegation of overt act against this petitioner. It is mentioned in the written report that the informant and others are doing the work of vegetable seller under the bridge, which was opposed by the petitioner and others. In the instant case, the criminal proceeding is manifestly illegal with mala fide. The proceeding is maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge.



Therefore, the order of cognizance and the entire criminal proceeding against this petitioner is an abuse of process of law.

Accordingly, the order dated 31-08-2010 taking cognizance in Kotwali P.S. Case No. 216 of 2010 along with entire proceeding with respect to the petitioner is hereby quashed.

This quashing petition is allowed.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	AFR
CAV DATE	
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