

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.43147 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District-
EASTCHAMPARAN(MOTIHARI)

=====

1. Birendra Kumar Sharma @ Prem Kumar Sharma Son Of Late Surya Pratap Narayan Singh
2. Atulya Kumar Son Of Birendra Kumar Sharma
Both Resident Of Village And P.O. - Jihuli, P.S.-Patahi, Dist.-East Champaran at present C/o Balram Rai, Mohalla – Sri Krishna Nagar, Motihari, P.S. – Motihari Town, District – East Champaran

.... Petitioner/s

Versus

1. The State Of Bihar
2. Mukesh Kumar (Advocate) Son of Ram Chandra Sharma Resident Of Village - Jihuli, P.S. -Patahi, Dist.-East Champaran

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Rajendra Narain, Sr. Adv.
Mr. Jai Prakash Verma, Adv.
For the Opposite Party/s : Mr. Vinod Shankar Modi, APP

=====

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT
Date: 18-04-2017

Heard both sides.

2. The petitioner filed this petition under Section 482 of the Cr. P.C. (hereinafter referred to as the ‘Code’) for quashing the order dated 21.08.2013 passed by the learned Judicial Magistrate Ist Class, Sikrahana at Motihari in Complaint Case No. 528/2013 corresponding to Trial No. 3259/2013 whereby the learned Judicial Magistrate found prima facie case under Sections 323, 504 and 384 of the Indian Penal Code.

3. The complainant alleged that on 25.06.2013, while he



was returning from his ancestral house along with Ram Chandra Sharma (father of the complainant) and Rakesh Kumar on a motorcycle, both the petitioners came in front of his motorcycle and asked him why he was interfering and obstructing the construction of boundary wall over his land. The complainant is said to have replied that by construction of the boundary wall the accused persons were intending to block roads and ingress and egress of the complainant. It is alleged that the petitioners' hurled abusive language, and on threat took signature of the complainant on plain paper, and also snatched Rs. 3,000/- from his possession. The complainant was examined on S.A. The complainant also examined his one witness. Learned Judicial Magistrate on perusal of the complaint petition and the evidence of the complainant found prima facie case to proceed against the accused vide order dated 21.08.2013 under Sections 323, 504 and 384 of the Indian Penal Code.

4. Mr. Rajendra Narain learned senior counsel for the petitioners submits that petitioners are agnates of the complainant. Admittedly, there is land dispute between the parties. A partition suit is also going on. The complaint petition is a glaring example of malicious prosecution. At the same time learned senior counsel has further submitted that from the order impugned it would appear that the Magistrate has not at all adverted to any evidence of the



complainant and his witness and found *prima facie* case to proceed against the petitioners. The order sans reasoning and is cryptic one. In reply to the aforesaid submission Mr. Ansul learned counsel for the complainant/Opposite party no. 2 submits that for finding *prima facie* case the Magistrate had no requirement to give reasons, even in brief, after discussing the evidence, and the mandate of law does not require that after enquiry the Judicial Magistrate must state the reasons, in brief, as to how he found out *prima facie* case to proceed against the accused.

5. Having considered the facts aforesaid and submission of the parties and on perusal of the records, I find that the complainant has alleged that while he was coming from his ancestral house he was intercepted by the petitioners, the petitioners abused and forcibly took the thumb impression on a plain paper, but it appears that after examination of the complainant and his witness the learned Judicial Magistrate has not discussed the evidence, even in brief, at the time of finding *prima facie* case under sections 323, 504 and 384 of the Indian Penal Code.

6. In view of the provisions as contained in section 203 of the Cr.P.C. the Magistrate is required to give brief reasons if he does not find sufficient material to proceed against the accused. Even if the Magistrate found *prima facie* case to proceed against the



accused, the Magistrate must assign reason, of course, in brief, but from perusal of the order impugned, it appears that the order does not contain any reason for finding prima facie case. Therefore, I find that on this ground alone that order sans reasoning and the same is cryptic one, and therefore the same is bad and not sustainable in the eyes of law. Accordingly, the order dated 21.08.2013 passed in Complaint Case No. 528/2013 corresponding to Trial No. 3259/2013 is set aside. The quashing petition is allowed and the matter is remitted back to the learned court to pass order afresh in accordance with law.

(Prabhat Kumar Jha, J.)

Vinita/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05/05/2017
Transmission Date	05/05/2017

