

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.23385 of 2017

Arising Out of PS.Case No. -38 Year- 2017 Thana -ASHOK PAPER MILL District- DARBHANGA

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1. Mojibur Rahman @ Mojibul Rahman Son of Late Mohammad Alam

2. Md. Naiyaz Ahmad @ Neyaz Ahmad Son of Abdus Sattar @ Sattar

3. Md. Naushad Son of Mustafa

All Residents of Village- Chandan Patti, Police Station- A.P.M., District- Darbhanga.

.... Petitioner/s

Versus

The State of Bihar

.... 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 AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 10-07-2017

Heard learned counsel for the petitioners, learned A.P.P.

for the State and learned counsel for the informant, who has *suo motu* appeared.

2. The petitioners apprehend arrest in connection with A.P.M. P.S. Case No. 38 of 2017 dated 18.03.2017 instituted under Sections 147/148/149/341/303/353/307/506/504 of the Indian Penal Code.

3. The allegation against the petitioners is of assault and causing obstruction in the discharge of official duties and also of tearing of documents.



4. Learned counsel for the petitioners submitted that the wife of petitioner no. 1, who is the Mukhiya of Chandanpatti, along with about 50 other villagers had made a complaint to the Block Development Officer, Hayaghat, Darbhanga with regard to irregularities committed by Pradip Kumar Jha, who is the informant, relating to preparation of list of beneficiaries of *Pradhan Mantri Awas Yojana (Gramin)*. It was submitted that the Deputy Development Commissioner, Darbhanga under letter no. 579 dated 16.03.2017 addressed to the Block Development Officer, Hayaghat, Darbhanga, after noting such complaint against the informant, had directed the Block Development Officer to get the matter enquired and to take necessary action. It was submitted that in terms of the said direction, the Block Development Officer, Hayaghat, Darbhanga constituted a team of 10 persons of which the informant was also a member. It was submitted that when the team went for enquiry at the spot, the general public were enraged as the person against whom there was allegation was member of the team which had been constituted and had gone to enquire into such allegation, and thus, there was a fracas and melee at the spot in which the mob being enraged went on a rampage resulting in minor hurt on the body of the informant in which some papers could also have been also destroyed. Learned counsel submitted that just because the petitioner no. 1 is the husband of the Mukhiya and the



petitioners no. 2 and 3 are also known persons, they have falsely implicated by the informant to put pressure on the Mukhiya not to pursue the complaint. Learned counsel submitted that bare perusal of the F.I.R. would indicate that there have been manipulations and additions at various places and this coupled with the fact that though the incident is said to have taken place on 18.03.2017, the *fardbeyan* is also purportedly of the same day, it has been forwarded to the Court on the 4th day i.e., 21.03.2017, which is apparent from the endorsement of the A.C.J.M. on the said F.I.R. and for which there is no explanation. Learned counsel submitted that even the injury report, copy of which has been brought on record as Annexure-9, reveals that there was only swelling and tenderness on upper back of the informant, which was simple in nature caused by hard blunt substance. Learned counsel submitted that the *mala fide* of the local administration would be clear from the fact that the police have brazenly and outrageously introduced Section 307 of the Indian Penal Code as one of the sections under which the petitioners have been accused, which is totally perverse and contrary to the injury report itself.

5. Learned A.P.P. submitted that the allegation against the petitioners is of obstructing in the performance of official duties and destroying documents.



6. Learned counsel for the informant submitted that the injury report is of the same day and that he had gone to make the inspection as the same was under the order of the Block Development Officer, Hayaghat, Darbhanga and he was not responsible for the same. He has produced before the Court letter no. 342 dated 17.03.2017, which is copy of the order constituting the team for investigation of which the informant was also made one of the members. Let the same be kept on record.

7. Considering the facts and circumstances of the case and submissions of learned counsel for the parties, the Court is in agreement with the submissions of learned counsel for the petitioners that a person who is accused of having prepared the list of beneficiaries in an illegal manner being made a party of the team which is going to investigate and coming before the person who had made complaint would but naturally result in a situation where there would be public outcry and outrage against such person as the accused is acting as a judge in his own cost. The Court would also observe that swelling and tenderness on upper back can in no way be interpreted to attract Section 307 of the Indian Penal Code.

8. For the reasons aforesaid, in the event of arrest or surrender before the court below within six weeks from today, the petitioners be released on bail upon furnishing bail bonds of



Rs.10,000/- (ten thousand) each with two sureties of the like amount each to the satisfaction of the learned Additional Chief Judicial Magistrate- VI, Darbhanga in A.P.M. P.S. Case No. 38 of 2017, subject to the conditions laid down in Section 438(2) of the Code of Criminal Procedure, 1973.

9. The petitioners and the bailors shall execute bond with regard to good behaviour of the petitioners. The petitioners shall also give an undertaking to the Court that they shall not indulge in any criminal activity. Any violation of the terms and conditions of the bonds or the undertaking shall lead to cancellation of their bail bonds. The petitioners shall cooperate in the trial and be present before the Court on each and every date. Failure to do so on two consecutive dates, without sufficient cause, shall also lead to cancellation of their bail bonds.

10. The Application stands disposed off.

11. Before parting with the order, the Court takes judicial notice of the fact that direction of the Deputy Development Commissioner, Darbhanga was to get the matter enquired and it was also stated that the complaint was against Pradip Kumar (Jha). Thus, making Pradip Kumar (Jha) as a member of the team to investigate and that too purportedly under the direction issued by the Deputy Development Commissioner is reflective of the fact that the Block



Development Officer, Hayaghat, Darbhanga was in fact sowing the seeds for a law and order situation to occur knowing fully well that the accused person is being sent at the spot before the persons who had made the complaint, i.e., the public at large would be present and thus the incident was waiting to happen by such act. The Court would thus require the District Magistrate, Darbhanga to look into the matter as to how the Block Development Officer, Hayaghat, Darbhanga, acting under the direction of the Deputy Development Commissioner, Darbhanga to make an enquiry into the allegations against Pradip Kumar (Jha), had made Pradip Kumar (Jha) also a member of the team. The District Magistrate, Darbhanga shall take appropriate action in the matter promptly.

12. Mr. Bhanu Pratap Singh, learned A.P.P. shall communicate the order to the District Magistrate, Darbhanga for compliance.

13. For the limited purpose of informing the Court with regard to the action taken by the District Magistrate, Darbhanga in the matter, the case be listed under the heading “For Orders’ at 2:15 P.M. on 26th July, 2017.

(Ahsanuddin Amanullah, J)

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