

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.7253 of 2016**

Arising Out of PS.Case No. -2064 Year- 2015 Thana -SIWAN COMPLAINT CASE District-  
SIWAN

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1. Arjun Sah @ Arjun Kumar Sah Son of Chunni Sah Resident of Village -  
Lahezi, P.S. - Basantpur, District - Siwan.

.... .... Petitioner/s

Versus

1. The State of Bihar.  
2. Ramji Thakur Son of Late Shankar Thakur Resident of Village - Lahezi,  
P.S. - Basantpur, District - Siwan.

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Krishna Kant Singh, Adv

For the Opposite Party/s : Mr. Anil Kumar (APP)

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**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**  
**ORAL ORDER**

4      26-10-2018                      Heard learned counsel for the petitioner as well as  
learned APP.

2. Petitioner has challenged order dated 01.10.2015  
passed by Additional Chief Judicial Magistrate-II, Siwan whereby  
and whereunder petitioner along with others have been summoned  
to face trial for an offence punishable under Sections 147, 148,  
149, 393, 354, 380, 427 of the IPC relating to Complaint Case No.  
2064/2015.

3. For an occurrence allegedly committed on  
25.07.2015, complaint was filed on 28.07.2015 having an  
allegation that the accused persons forming an unlawful assembly  
armed with deadly weapon raided his house, assaulted, molested  
the female folk and snatched away Rs. 1 Lakh which he was



carrying in order to have treatment of his wife. They have also taken away ornaments, clothes etc.

4. Contention on behalf of the petitioner is that this case has purposely been filed putting false and frivolous allegation in the background of the institution of two case bearing Basantpur PS Case No. 156/2015 wherein date of occurrence happens to be 15.08.2015 that means to say, after filing of instant case and further complaint petition no. 1184/2015 whereupon Basantpur PS Case No. 102/2015 has been registered as directed by the competent court under the guise of Section 156(3) of the CrPC. It has also been submitted that a Title Suit is pending amongst the parties and only to make out a case of possession/dispossession, this case has been filed. Learned counsel has further submitted that he is unable to say whether witnesses before charge has been examined or not.

5. On the other hand, learned APP opposed the submissions made at the end of learned counsel for the petitioner and submitted that after conducting an enquiry under Section 202 CrPC, the learned Magistrate after tracing out prima facie case took cognizance in terms of Section 190 CrPC which, in the manner as indicated above could not be interfered with, more particularly, in the background of the fact that it is an admitted



case of the petitioner that parties are on strained relationship.

6. Presence of Title Suit or criminal cases is not a ground to discard the allegation, more particularly, when the same happens to be subject to litmus test by way of cross-examination. Because of the fact that it happens to be a complaint case, on account thereof, could it be seen as a malicious prosecution.

7. That being so, there happens to be no justifiable ground to interfere with the order impugned. Consequent thereupon, the same is rejected.

8. However, it is made clear that if the witnesses before charge is not going to be examined, then in that circumstance, Section 244 CrPC does empower the learned lower court to pass appropriate order.

**(Aditya Kumar Trivedi, J)**

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