

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.14541 of 2012

Arising Out of PS.Case No. -0 Year- null Thana -null District- SIWAN

- =====
1. Abdul Salam son of Late Md Aslam.
 2. Tarique Anwar @ Tarik Anwar
 3. Guddu

Both sons of Abudl Salam, Residetn of village- Kharsanda, P.S.-
Hussainganj, District- Siwan.

.... Petitioner/s

Versus

1. The State of Bihar
2. Md. Danish son of Late Md. Aslam, Resident of village- Kharsanda, P.S.-
Hussainganj, District- Siwan.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Chandra Mauli Prasad Singh, Adv.

For the Opposite Party/s : Mr. Subhash Chandra Mishra, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
CAV JUDGMENT

Date: 11-04-2018

At the very outset, learned counsel for the petitioners has submitted that the petitioner No.1 is died and to that effect a supplementary affidavit has already been filed on behalf of the petitioners, which is kept on record.

Heard learned counsel for the parties.

The petitioner, by way of this application under Section 482 of the Code of Criminal Procedure, has challenged the order dated 07.02.2012 by which the learned Sessions Judge, Siwan has rejected the petition for discharge filed by the petitioner in Sessions Trial No. 588 of 2011 arises out of Hussainganj P.S. Case No. 43 of 2009 registered for the offences punishable under Sections 147, 148,



149, 341, 323, 504, 307 and 379 of the Indian Penal Code.

The brief facts of this case is that on 09.04.2009 while the informant was thrashing the bundles of wheat crop in his Kharihan, the petitioners and other accused persons armed with lathi and danda came there and abused him and assaulted the labourers of the informant. It is further alleged that on protest, one Haji Ahmad Azad fired on informant from a country made pistol but some how he could not get firearm injury. Thereafter, they taken all the wheat crops in their possession and snatched Rs. 2000/- from the pocket of the informant.

Learned counsel for the petitioners has submitted that the petitioner Nos. 2 and 3 happen to be son of petitioner No.1, who happens to be own brother of O.P. No.2. As a matter of fact, there is land dispute between the parties and on account of the same, they have been falsely implicated in this case. It has further submitted that except for the allegation of assault, there is nothing in the F.I.R.. Neither the informant has got any injury nor any firearm was recovered from the possession of the petitioners. Moreover, the parties have settled their dispute by filling the compromise petition, which is evident from Annexure-7 to the supplementary affidavit filed by the petitioner. It has also been submitted that despite several notice issued to the O.P. No.2 by this Court, the O.P. No.2



has not put his appearance before this Court. On the above ground, it is submitted that the order dated 07.02.2012 passed in S.T. No. 588 of 2011 by the learned Sessions Judge, Siwan, Annexure-4, deserves to be set aside.

Learned counsel appearing for the State opposes the application by contending that there are allegations against the petitioners and the court below after going through the materials available on record has rightly rejected the petition for discharge of the petitioners. Therefore, the order dated 07.02.2012 passed in S.T. No. 588 of 2011 does not require any interference.

From perusal of the material on record and looking into the facts of the case, it appears that general and omnibus allegation have been leveled against the petitioners and no specific overt act is attributed to them. Neither the informant has got any injury nor anything incriminating has been recovered from the possession of the petitioners or even from the place of occurrence. Moreover, despite several notices issued by this Court to O.P. No.2, he has chosen not to appear before this Court to contest the matter. Since the petitioner No.1 has already died and the parties have compromised their dispute by way of filing the compromise petition, nothing remains in this case against the petitioners for their prosecution. The Hon'ble Supreme Court in the case of ***Gian Singh***



Versus State of U.P. reported in ***(2012) 10 Supreme Court Cases 303*** has laid down the law that criminal proceedings may be quashed even in non-compoundable cases by the High Court in exercise of its extraordinary jurisdiction to restore peace between the parties and in case the justice so demands. According to the Hon'ble Supreme Court, if the offence involve private dispute between the parties of commercial nature or matrimonial dispute and it is not related to a heinous offence, the proceeding may be quashed.

In view of the above, the present application is allowed and the entire proceeding including the order dated 07.02.2012 by which the learned Sessions Judge, Siwan has rejected the petition for discharge of the petitioner in Sessions Trial No. 588 of 2011 arises out of Hussainganj P.S. Case No. 43 of 2009 is, hereby, quashed.

This application, accordingly, stands allowed.

(Arvind Srivastava, J)

Brajesh/-

AFR/NAFR	NAFR
CAV DATE	16.11.2017
Uploading Date	16.04.2018
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