

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.34851 of 2012

Arising Out of PS.Case No. -804 Year- 2011 Thana -null District- MADHEPURA

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1. Devanand Mishra,
 2. Mahanand Mishra,
 3. Shivanand Mishra,
 4. Panchanand Mishra, all son of late Mahendra Mishra,
 5. Jamunadhar Mishra, son of late Hari Ballabh Mishra,
 6. Harnedra Mishra @ Hem Chandra Mishra,
 7. Prem Chandra Mishra,
 8. Bablu @ Prakash Chandra Mishra, petitioner nos.6 to 8 are sons of Jamunadhar Mishra,
 9. Dinesh Mishra,
 10. Nawal Mishra, both sons of Kulanand Mishra,
 11. Kulanand Mishra, son of late Damodar Mishra,
 12. Mithu @ Sudhakar Mishra, son of Shivanand Mishra,
 13. Pradeep Kr. Mishra, son of Devanand Mishra,
 14. Kartik Jha, son of Dukh Mochan Jha,
 15. Palat Jha @ Ramakant Jha, son of Teju Jha,
 16. Lal Jha @ Binay Kant Jha,
 17. Sundar Jha,
 18. Lalan Jha, petitioner nos.16 to 18 are son of Late Jokhan Jha,
 19. Rahul Kumar Jha,
 20. Raghav Kumar Jha,
 21. Roshan Kumar Jha, petitioner nos.19 to 21 are sons of Lal Jha,
 22. Sonu Kumar Jha, son of Sundar Jha,
 23. Suman Kumar Jha, son of Sundar Jha,
 24. Indra Nath Jha, son of late Radhakant Jha,
 25. Golu Jha, son of Indra Nath Jha, all resident of village-Tharbitia, P.S.-Phulparas, Distt- Madhubani

.... Petitioner/s

Versus

1. The State of Bihar
2. Sunny Saurabh, son of Anand Mishra, resident of village-Tharbitia, P.S.-Phulparas, Distt-Madhubani

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Raj Kumar, Advocate
Mr. Ratnakar Jha, Advocate

For the Opposite PartyNo.1: Mr. B. N. Pandey, APP

For the Opposite Party No.2: Mr. Kameshwar Pd. Gupta, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 2-02-2018



1. This application (Cr. Misc. No.34851 of 2012) was heard along with Cr. Misc. No.35927 of 2012 and the order was kept reserved. From perusal of the impugned order passed in both the cases, it appears that orders have been passed on the basis of the complaint lodged by different complainant with different cause of action. Therefore, judgments are delivered in both the cases separately.

2. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 31.07.2012 passed by the Judicial Magistrate, 1st class, Jhanjharpur, in C. R. No.804 of 2011/ Tr. No.2581 of 2012 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioners for the offence under Section(s) 323, 380, 448 Indian Penal Code.

3. Complaint case has been filed by Sunny Saurav alleging therein that father of the Complainant is Secretary of *Maa Jagat Dhatri Durga Puja Samittee*. Functions of the aforesaid *Durga Samittee* concluded between 01.11.2011 to 05.11.2011. It is further alleged that while father of the Complainant was sleeping in his house after taking dinner, all the accused persons (petitioners) after forming unlawful assembly started breaking the door of the house. They were armed with *Lathi, Bhala, Gandasa, Khanti*,



Tengari, revolver etc. They entered into the house after breaking the gate and confined the Complainant and his grand-father in their custody and locked them in a room and also assaulted them. They enquired about the father of the Complainant and told them that they would kill him today. Accused nos.1 to 5 and 11 ordered to kill the father of the Complainant by fire arm and looted the property from the house. Thereafter, accused nos.6, 9 and 22 armed with revolver started searching the father of the Complainant, who fled away from another gate after seeing danger to his life. Accused nos.6, 9 and 22 fired from the revolver, but father of the Complainant ran away and saved his life. Thereafter, accused nos. 4, 6, 8 and 23 looted away the articles from the house as mentioned in the Complaint Petition. The accused persons also entered into the house of uncle of the Complainant after breaking the door and committed *loot-paat* and also assaulted him with fists and slaps. They also assaulted aunt of the Complainant after giving her threat with weapon.

4. The Court below after holding enquiry has found *prima facie* case against all the petitioners for the offence under Section(s) 323, 380, 448 Indian Penal Code.

5. Counsel for the petitioners has submitted that besides the present complaint, father of the Complainant has filed Complaint Case No.729 of 2011 in which learned Magistrate has



found *prima facie* case against the petitioners for the offence under Section(s) 323, 341, 379, 504/34 Indian Penal Code. Manoj Mishra has filed another case vide Complaint Case No.194 of 2012 against the petitioners, which is annexed as Annexure-4.

6. Counsel for the Opposite Party No.2 has submitted that in all these Complaint Petitions, Complainants are different and cause of action is also different. Petitioners have committed different overt act as mentioned, in detail, in other Complaint Petitions for which separate Complaint Petitions have been filed against the petitioners. The counsel for the petitioners has further submitted that impugned order will not become illegal merely because other complaints are also filed against the petitioners by the family members of the Complainant.

7. Learned APP has submitted that there is no illegality in the impugned order.

8. From perusal of the impugned order, it appears that the Court below on the basis of the allegation made in the Complaint Petition as well as statement of the witnesses recorded during enquiry has found *prima facie* case against the petitioners-accused persons for the offence under Section(s) 323, 380, 448 Indian Penal Code.

9. This Court is of the view that merely because of



filing of other complaint case against the petitioners for different cause of action by other family members of the Complainant, the impugned order cannot be declared to be illegal. Learned Magistrate after holding proper enquiry on the basis of the allegation made in the complaint, statement of witnesses recorded during enquiry including Solemn Affirmation of the Complainant has found *prima facie* case against the petitioners.

10. Therefore, this Court does not find any illegality in the impugned order.

11. The application is, accordingly, dismissed.

12. However, petitioners are given liberty to raise all the points as raised in the present application at the time framing of Charge, which shall be considered and disposed off by the learned Court below in accordance with law without being prejudiced by this order.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	11-12-2017
Uploading Date	03-02-2018
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