

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No. 32587 of 2011**

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1. Pramod Singh son of Ram Swarup Singh
  2. Bhushan Singh Son of Pramod Singh
  3. Mukul Singh @ Mukul Kumar, Son of Bhushan Singh
  4. Rukmini Devi Wife of Pramod Singh
  5. Laxmi Devi @ Rita Devi, Wife of Bhushan Singh
  6. Gudiya Kumari, Daughter of Bhushan Singh
- All Resident of Village - Isua, P.S.- Sarmera, District - Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Indu Devi, Wife of Prahlad Singh, Resident of Village- Issua, P.S. Sarmera,  
District- Nalanda.

... .. Opposite Party/s

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**Appearance :**

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|--------------------------|---|-----------------------------------|
| For the Petitioner/s     | : | Mr. Nawal Kishore Singh, Advocate |
| For the Opposite Party/s | : | None                              |
| For the State            | : | Mr. Jharkhandi Upadhyay, A.P.P.   |

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN  
AMANULLAH**

**ORAL JUDGMENT**

**Date : 30-11-2018**

Heard learned counsel for the petitioners and learned  
A.P.P. for the State.

2. During the pendency of the application, the petitioners no. 1 and 4 have died and accordingly, the same is restricted to petitioners no. 2, 3, 5 and 6.

3. The petitioners have moved the Court under Section 482 of Criminal Procedure Code, 1973 (hereinafter referred to as the 'Code') for the following reliefs:

*“That this application is for quashing the criminal prosecution of Complaint Case No. 801(C)/2006 (Indu Devi v/s Pramod Singh)*



*against the petitioners including the order dated 23.08.2011 passed by the learned S.D.J.M., Biharsharif, Nalanda, rejecting the petition dated 24.9.10 filed by the petitioners under Section 245 of the Code of Criminal Procedure in the aforesaid Complaint case.”*

4. Petitioner no. 1 is the full brother of the husband of the opposite no. 2, who is the complainant and the other petitioners are all family members, including the minor daughter, who is petitioner no. 6, being the granddaughter of petitioner no. 1.

5. As per the complaint of the opposite party no. 2, the petitioners had entered into her portion of the common dwelling house on 04.08.2006, where she resides, and had alleged that due to her activity as a ‘Daain’ (witch), the petitioner no. 3 was not keeping well and had even fainted on that day due to such witchcraft of the opposite party no. 2 and she was assaulted and further threatened that she would be killed if she does not stop from such practice. After enquiry, the Court had taken cognizance against the petitioners under Sections 323 and 379 of the Indian Penal Code and Section 3 of the Prevention of Witch Practices Act, 1999. The petition for discharge under Section 245 of the Code was also rejected by order dated 23.08.2011 leading to filing of the present case.

6. Learned counsel for the petitioners submitted that they are family members living in the same ancestral house and



due to dispute relating to partition, the opposite party no. 2 has been filing regular complaints before the police and the authorities to harass and force the petitioners to accept her wishes. It was submitted that despite the husband and son of the opposite party no. 2 being alive, it is opposite party no. 2, who is coming in the forefront and lodging false complaints before the authorities. He further submitted that the opposite party no. 2 had filed Sarmera P.S. Case No. 68 of 2005, in which the police had submitted final form finding the case to be false and the learned C.J.M., Nalanda had also accepted the same. It was submitted that similarly in another complaint case, the Court under Section 203 of the Code had dismissed the same. Learned counsel submitted that the parties have also come to a formal agreement before the *Punches* on 11.09.2006 with regard to not filing cases against each other and also with regard to settlement of the land dispute. Learned counsel submitted that the complaint case has been filed in a routine and mechanical manner without complying with the provisions of Section 154 of the Code, especially Sub-section (3) thereof, which requires a person to first send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses commission of cognizable offence, shall either investigate the case himself or



direct an investigation to be made by any police officer subordinate to him and only upon the same not being done, complaint should be filed. It was submitted that just making a false statement that the police had asked the complainant to file the complaint cannot be a substitute for not complying with the statutory provisions. In this connection, learned counsel referred to and relied upon a decision of this Court in the case of **Vijay L. Sonawane vs. State of Bihar** reported as **2017 (1) PLJR 615**, where it has been held that such requirement under Sub-section (3) of Section 154 of the Code is in mandatory terms and has to be complied with as it is a safeguard against false and *mala fide* prosecution. Learned counsel further submitted that the order of the co-ordinate Bench was passed relying upon the order of the Hon'ble Supreme Court in the case of **Priyanka Srivastava v. State of U.P.** reported as **(2015) 6 SCC 287**.

7. Learned A.P.P. submitted that the Court after going through the materials on record had rejected the petition under Section 245 of the Code and there was no illegality in the same.

8. However, with regard to the merits of the matter and on facts he was not in a position to controvert that the sequence of events disclosed that the opposite party no. 2 had been regularly



filing cases which have been either dismissed by the Court or found false by the police.

9. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties and also taking note of the fact that nobody has appeared to oppose the application, the Court finds that a case for interference has been made out. From the sequence of events as discussed above, it appears that the opposite party no. 2 has been regularly filing cases against the petitioners, who are close family members and dwelling in the same ancestral house, for oblique reasons, moreso with regard to there being property dispute against the parties and the present case is also an abuse of the process of the Court.

10. Accordingly, the application is allowed and the entire criminal prosecution arising out of Complaint Case No. 801(C) of 2006, including order dated 23.08.2011 by which the petition under Section 245 of the Code filed by the petitioners was rejected, are quashed.

**(Ahsanuddin Amanullah, J)**

P. Kumar

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