

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.2024 of 2017

Arising Out of PS.Case No. -60 Year- 2015 Thana -MADHUBANI COMPLAINT CASE District-
MADHUBANI

- =====
1. Kashi Kant Thakur son of Late Ganesh Thakur.
 2. Shivanand Thakur @ Bablu Thakur, son of Kashi Kant Thakur
 3. Pravin Thakur @ Pravin Kumar, son of Kashi Kant Thakur.

All are resident of Village-Deopura, P.S.-Benipatti, District-Madhubani.

.... Petitioners

Versus

1. The State of Bihar.
2. Abhay Kant Thakur @ Abhi Thakur son of Late Dinesh Thakur, resident of village-Deopura, P.S.-Benipatti, District-Madhubani.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Bhavendra Jha, Advocate

For the Opposite Party/s : Mr. Jharkhandi Upadhyay, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 07-05-2018

This application under Section 482 of the Code of Criminal Procedure (for short 'Cr. P.C.') has been filed by the petitioners for quashing the order of cognizance dated 04.05.2016 passed by the learned A.C.J.M., Benipatti, Madhubani in C.R. Case No.60 of 2015 by which the petitioners have been summoned to face trial for the offences punishable under Sections 323, 504 and 380 of the Indian Penal Code.



2. The prosecution case is based on the complaint filed by opposite party no.2 Abhay Kant Thakur wherein the complainant has alleged that the petitioner no.1 is the cousin of the complainant and he has formed a group of anti-social elements and, on the date of occurrence, all the accused-petitioners came with three unknown persons and started to take away the wooden log of *sisam* which was 20 feet long and on protest, petitioner no.1 abused him and loaded the said wooden log on *thela* after cutting the same in three parts and started to go. When the complainant again protested, the accused-petitioners started beating him by fists and slaps and danda. When hue and cry was raised, the complainant's nephew Navin Kumar came to save him but they also assaulted him. It is further alleged that petitioner no.1 snatched Rs.200/- from the pocket of the complainant and petitioner no.2 entered into the house of complainant and took away a box containing articles worth Rs.50,000/- and petitioner no.3 took away a bicycle.

3. It is submitted by the learned counsel for the petitioners that falsity of the case would be evident from the fact that the complaint was filed one month nine days after the alleged date of occurrence and no plausible explanation has been given in the complaint for the inordinate delay caused in filing the case. It is further contended that petitioner no.1 is an old man, aged about 73



years, who was working on the post of Reader and retired from the said post on 31.01.2005 whereas petitioner no.2 is a Central Government employee and is living in Delhi. It is contended that the instant complaint is malicious in nature and there was no reason for the learned Magistrate to mechanically take cognizance of the offences and summon the petitioners for trial.

4. On the other hand, learned counsel appearing for the State submitted that the allegations made in the complaint do attract the ingredients of the offences under which cognizance has been taken. He submitted that after receiving the complaint, the learned A.C.J.M. conducted inquiry under Section 202 of the Cr. P.C. and in course of inquiry, three witnesses namely, Navin Thakur, Kali Kant Thakur and Subhail Thakur were examined and they have fully supported the case of the complainant.

5. I have heard learned counsel for the parties.

6. The defence taken by the petitioners in the present case can be appreciated by the court below at the stage of framing of charge. So far as the summoning order is concerned, the same is passed on the allegations made by the complainant and an inquiry which was held ex parte under Section 202 of the Cr. P.C. Whether the allegations made in the complaint are true or false cannot be appreciated by this Court in exercise of jurisdiction under



Section 482 of the Cr. P.C. Such plea can be considered by the court below if the witnesses are cross-examined prior to the framing of charge under Section 244 of the Cr. P.C. and, in case, the court finds that there is no material to proceed against the petitioners, the Court may discharge the petitioners in exercise of powers conferred under Section 245 of the Cr. P.C. As far as the material on the basis of which the cognizance has been taken or summoning order has been passed by the learned Magistrate is concerned, in the opinion of this Court, no illegality can be found with the same at this stage.

7. In that view of the matter, the application is dismissed with liberty to the petitioners to raise all the points available to them at the stage of framing of charges.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.05.2018
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