

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.22794 of 2017

Arising Out of PS.Case No. -495 Year- 2016 Thana -NALANDA COMPLAINT CASE District-
NALANDA (BIHARSHARIFF)

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1. Humayun Ansari @ Humayu Ansari @ Md. Humayun Rashid Son of Late Naseeruddin, Resident of Mohalla- Panchan Hilsa, P.S. Hilsa, District- Nalanda.
 2. Pappu Mian @ Pappu Son of Mumtaz Rayeen
 3. Duggu Mian @ Duggu Son of Nizami Darji
 4. Raju Mian @ Md. Raju Alam Son of Nizami Darji
 5. Aaihsan Mian @ Md. Ehsaan Son of Late Azeem Mian
 6. Babar Mian @ Md. Babar Ali Son of Late Sabraiz Mian 2 to 6 are Resident of Mohalla- Dargah Road, Hilsa, P.S.- Hilsa, District- Nalanda.
 7. Naushad Mian @ Nause @ Naushad @ Sonu Son of Yaqub Mian
 8. Sonu Mian @ Md. Akhtar Son of Yaqub Mian
 9. Md. Parvez Mian @ Md. Privej Son of Late Sabdulla Mian, 7 to 9 are Resident of Mohalla- Saihat Kuan, Dargah Road, Hilsa, P.S.- Hilsa, District- Nalanda.
 10. Rishikesh Kumr S/o Sri Bacchu Singh, Resident of Brahmpur, P.S.- Ramkrishna Nagar, District Patna, at Present Posted as A.S.I. Hilsa Police Station, District Nalanda.

.... Petitioners

Versus

1. The State of Bihar
2. Prof. Dr. Gulam Mustafa Son of Late Feku Shah, Resident of Mohalla- Dargah Road, Hilsa, P.S.- Hilsa, District- Nalanda.

.... Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. Shyamal Prakash, Advocate
For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 21-02-2018

The petitioners are aggrieved by the order dated



13.02.2017 passed by the learned 1st Additional Chief Judicial Magistrate, Hilsa in Complaint Case No. 495 C of 2016 by which finding a *prima facie* case to be made out for the offences punishable under Sections 385, 386, 341, 379, 504 and 506/34 of the Indian Penal Code and 27 of the Arms Act, the petitioners have been summoned to face trial in exercise of powers conferred under Section 204 of the Code of Criminal Procedure (for short 'Cr.P.C.').

2. It is submitted by the learned counsel for the petitioners that the allegations made by the complainant on the basis of which the petitioners have been summoned to face trial are false and concocted. As far as petitioner no. 10 is concerned, it is submitted that he is an Assistant Sub-Inspector of Police and, hence, he was protected under Section 197 of the Cr.P.C. and in absence of sanction for prosecution, the Court was not justified in summoning him.

3. In the complaint petition, the complainant has alleged that all the petitioners including petitioner no. 10 Rishikesh Kumar came to his house and took away several articles on the point of pistol. They coerced and threatened him to pay Rs.2 lakh. The matter was reported to the police and when the police failed to act upon the written report, a complaint was filed in the court.



4. In the court question, at the time of his examination under Section 200 of the Cr.P.C., the complainant contended that the entire occurrence was videographed by his daughter and the videograph was also produced before the Court along the paper cuttings of the news published in local daily 'Dainik Jagaran'. The statement made by the complainant has also been supported by the witnesses during inquiry conducted under Section 202 of the Cr.P.C.

5. In view of the materials noted above, no illegality can be found in the impugned order by which the petitioners have been summoned to face trial. It is not the case of the complainant that when the alleged offence was committed, the petitioner no. 10 Rishikesh Kumar was acting in discharge of official duty. Even the allegations made in the complaint do not even remotely connect in any manner the conduct of the petitioner no. 10 with the discharge of his official duty. In that view of the matter, no sanction was required to be taken for prosecuting him in the criminal case of this nature. So far as the submission that the allegations made are false and concocted is concerned, the same cannot be tested by this Court at this stage while exercising the jurisdiction under Section 482 of the Cr.P.C. The same shall be considered by the court only after the evidences are laid in judicial proceeding.



6. Accordingly, the application, being devoid of any merit is dismissed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
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