

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.26481 of 2017

Arising Out of PS.Case No. -252 Year- 2016 Thana -BANIAPUR District- SARAN

=====

Reena Devi, wife of Sanjeev Kumar Thakur, resident of village- Dhanupur, P.S.-
Baniyapur, District- Siwan.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Vijay Thakur @ Tuntun Thakur son of Late Bashishth Thakur
3. Rajnath Thakur son of Late Bashishth Thakur,
4. Avinash Thakur son of Vijay Thakur @ Tuntun Thakur

All are resident of village- Dhanupur, P.S.- Baniyapur, District- Siwan.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Arbind Kumar Singh, Advocate

For the State : Mr. Akbar Ali, APP

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 27-03-2018

This application under Section 482 of the Code of Criminal Procedure (for short 'the Cr.P.C.') has been filed by the petitioner for quashing the order dated 26.04.2017 passed by the learned 2nd Additional District and Sessions Judge, Saran at Chapra in Criminal Revision No.19 of 2017 whereby he has dismissed the revision application filed by the petitioner against the order dated 17.01.2017 passed by the learned Additional Chief Judicial Magistrate-XI, Saran at Chapra in Baniyapur P.S. Case No.252 of 2016, whereby he had



refused to take cognizance of the offence on the ground of admitted land dispute.

2. Initially, the petitioner filed a complaint case in the Court of Chief Judicial Magistrate, Saran at Chapra with respect of an occurrence which took place at 5 p.m. on 12.08.2016. The aforesaid complaint was sent to the police station under Section 156(3) of the Cr.P.C. for investigation pursuant to which a formal FIR bearing Baniapur P.S. Case No.252 of 2016 on 06.09.2016 was registered for the offences punishable under Sections 323, 354, 354B, 379, 427, 386, 452 and 506 read with 34 of the Indian Penal Code.

3. In course of investigation, the police recorded the statement of the complainant and also visited the place of occurrence and recorded the statements of the witnesses under Section 161(3) of the Cr.P.C. On completion of investigation, the investigating officer had found culpability of the accused persons in the alleged offence and filed final form being Final Form No.241 of 2016 holding therein that on account of land dispute between the parties a criminal case was filed. While the investigation was still pending, the petitioner had filed a petition in the nature of protest in the police case. On receipt of the final report submitted under Section 173(2) of the Cr.P.C., the learned Judicial Magistrate after looking into the materials collected in course of investigation, accepted the final report and directed the



protest petition filed by the petitioner to be registered as a separate complaint.

4. Being aggrieved by the order dated 17.01.2017 passed by the learned Judicial Magistrate whereby he had accepted the final report submitting by the investigating officer, a revision was filed by the petitioner before the learned Sessions Judge, Saran at Chapra vide Criminal Revision No.19 of 2017 which was dismissed by the revisional court vide order dated 26.04.2017. The said order is under challenge in the present application.

5. Learned counsel for the petitioner submitted that the police failed to investigate the case in proper manner and came to an erroneous finding that a criminal case was instituted due to land dispute. He submitted that the learned Magistrate also failed to appreciate the fact that due to land dispute on the date of occurrence the accused persons came at the house of the petitioner in drunken state and started abusing and passed filthy remark and also insisted for transfer of three kaththas of land in his name. The learned Magistrate also failed to appreciate the fact that on the alleged date of occurrence the accused persons entered into the house by breaking open the gate and started assaulting the petitioner with legs and fists and also caught her hair and threw her on the floor and threatened her to outrage her modesty and in that course they tore her blouse and pulled her Saree.



6. On the other hand, learned counsel for the State submitted that there is no error in the order impugned. He submitted that in course of investigation the witnesses did not support the prosecution case as alleged in the FIR. It came to light that initially a complaint was filed on account of long pending land dispute between the parties and, thus, the police rightly submitted final form against the accused persons. He submitted that the learned Magistrate committed no error in accepting the police report and the revisional court has also rightly dismissed the revision application.

7. I have heard learned counsel for the parties and perused the record.

8. Apparently, the accusation made in the complaint were not supported by the witnesses examined in course of investigation and, thus, the investigating officer came to a finding that there was no truth in the accusation and submitted final form holding that the case was instituted on account of land dispute. On appreciation of materials on record, if the learned Magistrate accepted the police report and directed the protest petition filed by the petitioner for being registered it as a separate complaint, no illegality can be found with the order impugned. In the opinion of this Court, the revisional court committed no illegality in dismissing the revision application as the order passed by the learned Magistrate was neither erroneous in law nor without



jurisdiction.

9. In that view of the matter, I see no merit in this application. Furthermore, though this application has been filed under Section 482 of the Cr.P.C., the same is in the nature of second revision, which is barred under Section 397(3) of the Cr.P.C.

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

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	31.03.2018
Transmission Date	31.03.2018

