

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.44862 of 2014

Arising Out of PS.Case No. -72 Year- 2013 Thana -BHABHU(KAIMUR) COMPLAIN C District-
BHABHUA (KAIMUR)

- =====
1. Satyendra Singh @ Satyendra Singh Yadav
 2. Surendra Singh Yadav
 3. Mangal Singh Yadav, All sons of Shri Ram Janam Singh, resident of Village-
Khudura, P.S.- Nuaon, District- Kaimur (Bhabhua)

.... Petitioner/s

Versus

1. The State of Bihar null null
2. Giraja Paswan, Son of Late Vishwanath Paswan, resident of Khudura, P.S.-
Nuaon, District- Kaimur (Bhabhua)

.... Opposite Party/s

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Appearance :

For the Petitioner s : Mr. Ranjit Kumar Singh, Advocate.
For the Opposite Party No.2 : Mr. Sanjeev Kumar Singh, Advocate.
For the State : Mr. Binod Kumar No.2, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT

Date: 04-05-2018

Heard learned counsel for the petitioners, learned
counsel for the opposite party no.2 and learned A.P.P. for the
State.

This application under Section 482 Cr.P.C. has
been preferred against the cognizance order dated 26.11.2013
passed by the learned Judicial Magistrate 1st Class, Bhabua at
Kaimur in Complaint Case No.72 of 2013, whereby the
learned Magistrate finding prima facie case took cognizance
of the offence against the petitioners and other accused
persons under Sections 323, 448 and 148 of the Indian Penal



Code.

It is submitted by learned counsel for the petitioners that the date of occurrence is said to be of 13.01.2013 but the complaint petition was filed after inordinate delay on 18.01.2013, without assigning any plausible reason for the aforesaid delay, which creates serious doubt about the prosecution case. It is further submitted that petitioner no.1-Satyendra Singh alias Satyendra Singh Yadav was not at the place of occurrence at the time of occurrence rather was at Army Headquarter, Secunderabad as is evident from the letter dated 08.03.2014 issued by Lt. Colonel, Headquarter Company, 1 EME Centre to the Noan Police Station, District Kaimur. It is also submitted that all the witnesses examined on behalf of complainant are his family members and are interested witnesses.

On the other hand, learned A.P.P. and learned counsel for the opposite party no.2 submitted that plea of alibi taken by the petitioners is a matter of trial and is not required to be considered at the stage of taking cognizance. So far as the delay in filing the complaint petition is concerned, the opposite party no.2 has explained the aforesaid delay in his complaint petition itself by stating that immediately after the



incident he informed the Noan Police Station on telephone and the police also arrived at the place of occurrence in the midnight and took a written complaint from the complainant but he has neither lodged any case nor taken any legal action against the accused persons till 18.01.2013 then he filed this complaint petition. It is also submitted that merely being the family members the testimonies of the said witnesses is not liable to be discarded out rightly.

From perusal of the record, it appears that the opposite party no.2 has filed the aforesaid complaint case against the petitioners and others under Sections 147, 148, 149, 323, 382 & 307 of the Indian Penal Code, Section 27 of the Arms Act and Section 3 (1) VIII, X & XI of the SC & ST Act with the case in succinct that at the time of occurrence the opposite party no.2 was taking meal in his house, in the meantime all the accused persons armed with firearm abruptly intruded into his house and on the call of accused Surendra Singh Yadav to eliminate the complainant accused Satyendra Singh Yadav pointing the gun on him assaulted on his back by means of leg. When his wife started making protest & hulla all the accused persons assaulted him by means of leg and fists. In the meantime, locals congregated there and on the



protest made by them accused Satyendra Singh Yadav extended threatening of dire consequences to them. Accused Surendra Singh Yadav forcibly obtained the signature of the complainant on some blank & written papers and on the protest made by him accused Managal Singh and Ram Ayodhya Singh assaulted him. All the accused persons damaged his utensils strewn the cereals and accused Bharat Singh took away suit case of complainant containing documents and cash of Rs.15,000/-. Accused Banarsi Singh also took away the complainant's wife box containing the apparels and a golden chain worth Rs.35,000/-. They also extended threatening of dire consequences & their eviction from the property slating them in the name of their caste. In support of his case the opposite party no.2 examined himself on solemn affirmation and also examined three witnesses.

From perusal of the S.A. of opposite party no.2 and account of the witnesses, it appears that all the witnesses have supported the prosecution case and learned lower Court considering the complaint case, solemn affirmation and the material available on record finding prima facie case has taken cognizance of the offence against all the accused persons including the petitioners under Sections 323, 448 and



148 of the Indian Penal Code by the impugned order.

So far as the delay in filing the complaint case is concerned, the opposite party no.2 has explained the aforesaid delay in his complaint petition itself by stating that he had already given information of the occurrence to the P.S. on telephone and police had arrived his house in the midnight of the occurrence and obtained the complaint petition from him but the police neither lodged any case nor took any action against the accused persons then he filed this case, which in my considered opinion appears to be convincing and appreciable.

The second contention of the petitioners is that the petitioner-Satyendra Singh Yadav was not present at the place of occurrence at the time of occurrence rather was at the Army Headquarter at Secunderabad and they also filed letter of Lt. Colonel in buttress of their aforesaid contention but, in my considered opinion, the defence of alibi is not required to be considered at the time of taking cognizance rather at the trial. So far as the third ground taken by the petitioners is concerned it is settled principle of law that the testimonies of the family members or interested witnesses is not required to be discarded out rightly rather it should be scanned and



scrutinized cautiously. On perusing the testimonies of the aforesaid witnesses, I do not find any vital and material contradiction or inconsistency in their testimony having potential to discard their aforesaid testimonies out rightly at the threshold.

In the facts and circumstances of the case, I do not find any illegality or impropriety in the impugned order warranting the quashing of the same and this application is shorn of merit and is dismissed accordingly.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	AFR
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