

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.23229 of 2018

Arising Out of PS.Case No. -52 Year- 2015 Thana -MEERGANJ District- GOPALGANJ

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1. Deo Nath Rai, son of Late Bodha Rai,
 2. Manisha Kumari, daughter of Deo Nath Rai,
 3. Meera Devi, wife of Deo Nath Rai,
 4. Neetu Kumari, daughter of Deo Nath Rai,
 5. Vivek Kumar Rai @ Vivek Kumar, son of Mani Rai,

All are resident of village- Saheba Chak, P.S.- Mirganj, District- Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Rakesh Tiwari, son of Late Gorakh Nath Tiwari, resident of village- Saheba Chak, P.S.- Mirganj, District- Gopalganj.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Pandey No.5, Advocate
For the State : Mr. Arun Kumar Singh No.5, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 20-08-2018

Defect, as pointed out by the Registry, is ignored.

2. Heard learned counsel for the petitioners and learned counsel for the State.

3. This application under Section 482 of the Code of Criminal Procedure (for short 'the Cr.P.C.') has been filed by the petitioners for quashing of the order dated 28.03.2017 passed by the



learned Chief Judicial Magistrate, Gopalganj in Mirganj P.S. Case No.52 of 2015 by which he has taken cognizance of the offences punishable under Sections 341, 323 and 504 read with 34 of the Indian Penal Code and summoned them to face trial.

4. It is submitted by the learned counsel for the petitioners that the petitioners are next door neighbours of the informant and they have been falsely implicated in the instant case on account of land dispute pending between the parties. It is further contended that the informant of the case is in the habit of filing false cases one after another against the petitioners in order to coerce and black mail them so that they may not pursue the civil suit pending between the parties.

5. On the other hand learned counsel for the State submitted that in the first information report there is specific allegation made by the informant that the accused petitioners assaulted the son of the informant in the morning and when the wife of the informant, namely, Uma Devi objected to the assault, they entered into the house of the informant and assaulted them with stick. He contended that the witnesses have supported the allegations in course of investigation pursuant to which charge-sheet was submitted and on perusal of the materials available on record the court has found that prima facie case has been made out against the petitioners. Thus, they have been summoned to face trial. He pleaded that the defence taken by the



petitioner can not be a ground for interdicting a criminal case in exercise of powers under section 482 of the Cr.P.C.

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

7. The first information report has been instituted by opposite party no.2 Rakesh Tiwari in which he has alleged that all the petitioners assaulted his son Om Prakash Kumar aged about twelve years when he was coming back after taking milk from the dairy at about 07.30 p.m. in the morning on 19.02.2015. When his wife intervened and tried to rescue her son, the petitioners entered into the house of the informant and assaulted his family members with stick. The allegations made in the first information report were found true during investigation. After perusing the materials available on record, the court below has found a prima facie case to be made out for the offences punishable under Sections 341, 323 and 504 read with 34 of the Indian Penal Code.

8. Having regard to the defence of the petitioners, the Court is of the opinion that the same cannot be a ground for holding the order impugned to be bad. Defence of the petitioner can only be appreciated during trial. In case, there is lack of sufficient materials to proceed against the petitioners in the case diary, it would be open to the petitioners to file an application under Section 239 of the Cr.P.C.



at the stage of framing of charge for discharge from the case.
However, on the basis of materials available on record, if the court below has found a prima facie case to be made out against the petitioners, no illegality with the order impugned can be found.

9. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
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