

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.16194 of 2015

Arising Out of PS. Case No.-145 Year-2011 Thana- KASIMBAZAR District- Munger

1. Amar Singh son of Tauji Lal Sah
2. Bhim Raj Singh @ Bhim Raj Sah son of Tauji Lal Sah
3. Sona Singh son of Tauji Lal Sah
4. Jai Raj Singh @ Jai Raj Sah son of Tauji Lal Sah
All resident of village Kora Maidan College Road, Police Station Kotwali,
District- Munger

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Kiran Devi W/o Sanjay Sah @ Munna Sah, resident of village Kora Maidan college Road, Police Station Kotwali, District- Munger

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sanjeev Ranjan, Adv
For the Opposite Party/s : Mr. Shyam Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 13-08-2019

Heard learned counsel for the parties.

2. Petitioners are accused in Kasim Bazar P.S. Case No.145 of 2011 lodged by opposite party No.2- Kiran Devi, Wife of Sanjay Sah @ Munna Sah. The petitioners have challenged the order of cognizance dated 22.10.2014, whereby the learned court below has taken cognizance against the petitioners for offences under Sections 341,323,504,447 and 34 of the Indian Penal Code and Section 27 of the Arms Act.

3. The challenge is on the ground that this criminal prosecution has maliciously been lodged due to civil dispute



between the informant and her husband. The background of the allegation is that the husband of the informant on his behalf and on behalf of his two minor children entered into a registered “agreement to sale” with petitioner Jai Raj Singh @ Jai Raj Sah and Amar Singh, whereby the husband of the informant agreed to sell the referred property on receipt of total consideration of Rs.Four Lacs. The part consideration was paid on the date of agreement through demand draft and the remaining amount was to be paid before 02.03.2012 and sale deed was to be executed. In between the period, the husband of the informant asked the petitioners to get demarcation and boundary wall on the land proposed to be transferred. The informant and other family members were not in favour of transfer of the said land by the husband of the informant though the husband of the informant was real title holder and he had entered into an agreement to transfer voluntarily. Due to family quarrel and for other reason known to the husband of the informant, the sale deed was not executed. Hence, two of the petitioners Jai Raj Singh @ Jai Raj Sah and Amar Singh brought T.S.No.146 of 2011 in the court of learned Sub Judge, Munger against the husband of the informant and his two minor sons for a decree of performance of the registered contract between the parties. The said suit is still pending.



4. In the aforesaid background, the complaint based FIR would reveal that the husband of the informant, who is co-accused of this case, developed extra marital relation with one of the tenants named in the complaint petition. The relationship between the two, strained the relationship with the informant and ultimately after committing assault to the informant, husband and the said tenant left the house and they were residing in the rented premise. For that dispute on 18.05.2011, all the accused person including the petitioners variously armed came and started abuse against the elder brother of the husband of the informant and his sons. Petitioner Jai Raj Singh @ Jai Raj Sah fired from his pistol, however, no injury was caused to anyone. For the same reason on 20.05.2011, again the accused person came and committed abuse and demanded ransom.

5. Submission is that the entire concocted allegation is just to pressurize in the civil suit brought by some of the petitioners for specific performance of contract against the husband of the informant. None of the witnesses before the police has supported that any of the accused was carrying any firearm or had used the same. Likewise none supported the allegation of demand of ransom. Even if the entire allegation is assumed to be correct, the offences for which cognizance has been taken are not



apparently made out in the facts and circumstances of this case because there is no allegation of wrongful restraint or wrongful confinement. There is no specific allegation against any of the petitioners to have caused hurt or criminal intimidation or trespass.

6. Learned counsel for the State after going through the case diary does not dispute that any of the witness has not supported the allegation against the petitioners.

7. After going through the material collected during investigation and the background of the allegation as well as nature of allegation, I am of the considered view that the offences for which cognizance has been taken by the learned court below are apparently not alleged against any of the accused and the vicarious liability cannot be attracted to prove the charges for the offences wherein cognizance has been taken. Hence, apparently allowing the continuance of the criminal prosecution would amount to abuse of the process of the Court.

8. Accordingly, the entire criminal proceeding aforesaid is hereby quashed and this application stands allowed.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
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