

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.7081 of 2015

Arising Out of PS. Case No.- Year-1111 Thana- District-

Sunil Kumar Sah Son of Late Nandlal Sah Resident of Mohalla - Yusufganj,
P.S. Laherisarai, District - Darbhanga

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Ghanshyam Kr Shrivastava @ Bikku S/O- Late Ishwarchandra Srivasatava
Resident of Mohalla- Yushufganj, P.S.- Laheriasarai, District- Darbhanga.

... .. Opposite Party/s

Appearance :

For the Petitioner/s :	Mr. Sanjeev Kumar Jha, Advocate
For the Opposite Party/s :	Mr. Jharkhandi Upadhyay, App
For Opposite Party No.2:	Mr. Pankaj, Advocate

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 27-06-2019

By the impugned order dated 21.10.2014 passed by the learned Judicial Magistrate, 1st Class, Darbhanga, the petitioner and others have been asked to face trial in connection with C.R. Case No.66 of 2013 brought by Opposite Party No.2 for the offences under Sections 323/380/504/452/436/34 of the Indian Penal Code.

2. Heard learned counsel for the parties.

3. Allegation in the complaint petition is that on 02.01.2013, at about 3:00 PM, petitioner Sunil Kumar Sah and three others armed with lathi, spear etc. came to the house of the informant and started assault against the wife of the informant.



Thereafter, they committed mischief by fire by burning the house of the complainant. The witnesses examined during inquiry, under Section 202 Cr.P.C., i.e., Dhananjay Kumar, Rajeshwar Pandit, Md. Mustafa, Ravi Shankar Sinha and Babita Srivastava, the wife of the complainant, have supported the allegation of commission of assault and mischief by arson against the accused persons.

4. The petitioner has challenged the cognizance order on the ground that the occurrence allegedly took place on 02.01.2013 whereas the complaint case was filed on 16.01.2013 just to avoid the chances of police not finding any sign of arson etc. at the place of occurrence. The complaint petition has falsely been filed due to civil dispute between the parties vide Title Suit No.293 of 2012 brought by the petitioner and others against the complainant of this case and others for recovery of possession from the suit property.

5. The next contention is that prior to filing of this complaint petition, the petitioner had filed informatory petition before the learned Chief Judicial Magistrate that the complainant and others are threatening to falsely implicate in some criminal case or to commit criminal act against the petitioner. After inquiry of that informatory petition, the police



submitted report on 15.01.2013 and there is no mention in the report regarding any act of mischief by fire was seen by the police when visited at the place of occurrence. His further contention is that the inquiry witnesses are not of the locality save and except wife of the complainant.

6. Contention of learned counsel for Opposite Party No.2 is that all the aforesaid grounds are grounds of defence and that can be availed at the appropriate step of the trial to see whether the accused persons are entitled to the benefit of doubt or not.

7. On the basis of the land dispute between the parties, it cannot be argued that in no circumstance criminal act cannot be committed by the parties to the civil litigation. The delay in filing the complaint petition is explainable at the stage of trial and only on the basis of the delay the prosecution case cannot be thrown away. The law is well settled that at the stage of summoning accused, the only thing which is required to be looked into is whether prima facie cognizable offence is made out against the accused persons or not and whether there is material to support the offences alleged. The probable defence of the accused cannot be looked into at this stage nor on the basis of probable defence the superior Court can interfere with



the cognizance order.

8. Therefore, I do not find any merit in this application. Accordingly, it stands dismissed.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
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