

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.2912 of 2017

Arising Out of PS. Case No.-1783 Year-2015 Thana- SAMASTIPUR COMPLAINT CASE
District- Samastipur

-
1. Nawin Kumar Thakur @ Nawin Thakur
 2. Shivkant Thakur,
 3. Amarkant Thakur,
 4. Pravin Kumar Thakur @ Pravin Thakur, All 1 to 4 S/o Laxaman Thakur,
Resident of Village- Sadhukha, P.S.- Khanpur, District- Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sumitra Devi, W/o Rambilash Thakur, Resident of Village- Sadhukha, P.S.-
Khanpur, District- Samastipur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Bijay Bhushan Prasad-Advocate
For the Opposite Party/s : Smt. Pushpa Sinha-A.P.P.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 29-03-2019 Heard learned counsel for the petitioners as well as
learned Additional Public Prosecutor.

Petitioners have challenged the order dated
26.09.2016 passed by the A.C.J.M.-3rd, Samastipur in
Complaint Case No.1783 of 2015, whereby and whereunder
petitioners have been summoned to face trial for an offence
punishable under Sections 341, 323, 504, 379/34 of the I.P.C.

Contention on behalf of the petitioners is that there
happens to be disclosure at the end of the Complainant/ O.P.
No.2 that she had gone to police station, but the police official



had not recognized her and so, it was incumbent upon her to have adopted the procedure so prescribed under Section 154(3) of the Cr.P.C. by way of giving written information to the S.P. through postal process. Deficient on that very score, cast doubt over the manner as well as genesis of occurrence. That means to say, the reliability of the prosecution version has come under the bracket of suspicion. Consequent thereupon, order impugned is fit to be set aside.

The learned Additional Public Prosecutor opposed the prayer.

The exercise of power under Section 482 of the Cr.P.C., in the facts and circumstances of the case having a prayer to quash the order of the cognizance, two kinds of appreciation are permissible, the first one to be falling the issue under one or all of the criterion laid down by the Apex Court in ***State of Hariyana & Ors. Versus Bhajan Lal & Ors. reported in AIR 1992 SC 604*** Whereunder at Para-102, the following criteria have been properly identified:-

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not



prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, on investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.



(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient grounds for proceedings against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceedings is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

Till today, the aforesaid event is commanding the sphere.



The other with regard to adoption of proper procedure at the end of the learned Magistrate and for that, repeatedly, it has been observed that at the stage of taking of cognizance, only prima facie material has to be seen. Recently in ***Prabhu Dutt Tiwari vs. State of Uttar Pradesh and others reported in (2018) 13 SCC 609***, wherein it has been held:-

“3. At the stage of summoning the accused on the basis of a private complaint, all that is required is a satisfaction by the Magistrate that there is sufficient ground to proceed against the accused in the light of the records made available and the evidence adduced by the complainant.

4. Having gone through the order passed by the Magistrate, it is fairly clear that there has been the required satisfaction. The discussion by the High Court would give an indication that the Magistrate had to appreciate the evidence and then enter a finding as to whether the accused are guilty or not. At the stage of summoning, as already stated above, the satisfaction required for the Magistrate is only to see whether there is sufficient ground to proceed against the accused.

5. Such a satisfaction for summoning an accused having been made out, the High Court went wrong in interfering with the summoning order. It was too early for the High Court to enter a finding otherwise. The



impugned order is, hence, set aside. The appeal is allowed.”

Once satisfaction is there, the High Court while exercising the power under Section 482 of the Cr.P.C. would not substitute to set aside the same. From the submission, as advanced, the order impugned has not been attacked on those criterion, rather on the single ground, having no proper identity in the facts and circumstances of the case.

Considering the submission having made on behalf of petitioners in consonance with the order impugned, instant petition lacks merit and is accordingly, dismissed.

(Aditya Kumar Trivedi, J)

vikash/-

U		T	
---	--	---	--

