

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.44175 of 2017

Arising Out of PS. Case No.-760 Year-2011 Thana- WEST CHAMPARAN COMPLAINT
District- West Champaran

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1. Md. Ayub
 2. Shekh Akub
 3. Shekh Matub
 4. Shekh Emam Hasan, All Sons of Md. Khalil Resident of Vill Sonbarsa, P.S. - Gopalpur, District - West Champaran Bettiah.
- Petitioner/s

Versus

1. State Of Bihar
 2. Yogendra Mahto Son of Late Nathuni Mahto, Resident of Vill - Sonbarsa, P.S. - Gopalpur, District - West Champaran.
- Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Rishikesh Ojha
For the Opposite Party/s : Mr.Sri Tapeswar Sharma

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date: 10-12-2019

The present petition has been filed for quashing the entire proceeding as well as the order taking cognizance dated 31.03.2014 whereby and where-under the learned court of Judicial Magistrate- 1st Class, West Champaran Bettiah has taken cognizance for the offence under Sections 147, 148, 323 and 379 of the Indian Penal Code against the petitioners herein in Tr. Case No. 2783 of 2014, arising out of Complaint Case No. 760(C) of 2011, lodged by the Opposite Party No.2.

2. The brief facts of the case, as per the complaint Case No. 760(C) of 2011, filed on 18.04.2011 is that the complainant has been coming into possession of the land in



question since a long time, however, on the alleged date and time of occurrence, the accused persons including the petitioners herein along with some unknown accused persons, came on the land of the complainant and other witnesses and started cutting the wheat crop on the strength of the dangerous arms being carried by them, where-after the complainant and other witnesses had arrived at the said land objected to the cutting of the wheat crop, whereupon, the accused persons started assaulting the complainant and others, resulting in them receiving injuries.

3. The learned trial court had conducted an enquiry under Section 200 of the Cr. P. C. and the statement of the complainant was recorded on oath, apart from recording of evidence of 7 witnesses produced by the complainant. The learned trial court by the impugned order dated 31.03.2014, after perusing the materials on record, the complaint petition, the statement of the complainant on oath and after going through the evidence adduced by the enquiry witnesses, found that a prima facie case is made out against the accused persons including the petitioner herein under Sections 147, 148, 323 and 379 of the Indian Penal Code, hence cognizance was taken accordingly.



4. The learned counsel for the petitioners has submitted that the petitioner no.1 had also filed a criminal Writ petition bearing Cr. W.J.C. No. 8381 of 2015 for quashing of the order taking cognizance dated 31.03.2014, however, the same stood dismissed for default by an order dated 15.02.2016 and then a restoration petition bearing M.J.C. No. 2402 of 2016 was filed, which was allowed, however, the aforesaid criminal writ petition was permitted to be withdrawn, however, with liberty to the petitioner to file an appropriate application under Section 482 Cr. P. C., hence the present petition has been filed.

5. It is further submitted that the allegations are false and no such incident, as narrated in the petition in question, has occurred. Lastly, it is submitted that the learned Judicial Magistrate-1st Class, Bettiah, West Champaran has taken cognizance against the petitioner by an order dated 31.03.2014 under Sections 147, 148, 323 and 379 of the Indian Penal Code without properly considering the facts and circumstances of the case as also without proper application of mind.

6. I have heard the learned counsel for the parties and perused the materials on record and I find no jurisdictional error or legal infirmity in the order taking cognizance dated 31.03.2014. The learned Judicial Magistrate- 1st Class, Bettiah,



West Champaran has followed the procedure prescribed under Chapter- XV of the Cr. P. C., 1973 and only after considering the statement made by the complainant on oath as also upon considering the evidence of the enquiring witnesses, totaling 7 in number and after perusal of the materials on record, has found a prima facie case to have been made out against the accused persons and has, accordingly, taken cognizance under Sections 147, 148, 323 and 379 of the Indian Penal Code against the accused persons.

7. At this juncture, it would be relevant to state that it is a well settled law that at the time of cognizance, the learned court below is only required to see as to whether on the basis of materials collected during the enquiry, prima facie offences is made out or not, so as to proceed against the accused persons and the defence of the accused persons cannot be looked into at the stage of taking cognizance.

8. Thus, this Court is of the considered opinion that since a prima facie case has been made out against the petitioner herein, as aforesaid, the learned court below has rightly taken cognizance against the petitioner herein. This Court is of the further view that it is not the case of the petitioner that the order of cognizance is without jurisdiction or there is any technical error. The only argument which has been



advanced on behalf of the petitioner is that the matter is required to be examined on merits, however, this Court is of the opinion that since the Code of Criminal Procedure itself provides certain remedies to the accused persons, order of cognizance, in absence of any illegality, is not required to be interfered with.

9. Considering the aforesaid facts and circumstances of the present case as also there being no apparent error in the impugned order dated 31.03.2014, this Court is of the opinion that the impugned order dated 31.03.2014 does not suffer from any infirmity so as to warrant any interference, hence the present petition stands dismissed, however, with an indication that the petitioners may take all the pleas, which have been taken in the present petition, at an appropriate stage i.e. at the stage of framing of charge by the learned court below.

10. Consequently, there is no merit in the case of the petitioners for quashing the entire criminal proceeding, hence no interference is warranted by this Court. The instant petition stands dismissed.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	07.02.2020
Transmission Date	

