

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.7077 of 2015

Arising Out of PS. Case No.-26 Year-2013 Thana- BISHUNPUR District- Darbhanga

1. Roop Lal Yadav Son of Late Jeewachh Yadav
2. Mangal Yadav
3. Dinesh Yadav
4. Dilip Yadav
5. Pradeep Yadav Sl. No. 2 to 5 are sons of Roop Lal Yadav All are resident of village - Panchaov, P.S. Bishanpur, District - Darbhanga

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Thakur, Adv
	:	Mr.Nilesh Kumar, Adv
	:	Mr.Shashank Shekhar, Adv
For the State	:	Mr.Shyam Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 12-07-2019

Heard learned counsel for the parties.

2. Petitioner Nos.2 to 5 are sons of petitioner No.1- Roop Lal Yadav. All the petitioners are accused in S. Tr. No.197 of 2014 arising out of Bishnapur P.S.Case No.26 of 2013 wherein their prayer for discharge has been refused by the impugned order dated 02.02.2015.

3. According to first information report, the informant- Pavitri Devi alongwith her husband-Lakhan Yadav had gone to attend her case in Darbhanga court. The case was going on with petitioner-Roop Lal Yadav since last 16 years. As soon as the



informant returned to her house, she saw that Arjun Yadav, Son of Roop Lal Yadav, was assaulting to his wife. When the husband of the informant tried to save to the wife of Arjun Yadav, Arjun started assault on the husband of the informant. As a result whereof, he died during course of treatment. During investigation, son of the informant in his statement before the police, stated that all the petitioners were also involved in the assault to his father. After completion of investigation, initially the police submitted chargesheet against Arjun Yadav only and investigation against the petitioners was kept pending, however, without collection of any further material against the petitioners, the petitioners were also chargesheeted in the case.

4. Contention of the learned counsel for the petitioners is that this is a case of malafide prosecution by making out a concocted allegation during investigation of the case just to wreak vengeance of the old criminal case going on between the parties. If the petitioners were involved in the occurrence, the informant, who is eye witness of the occurrence, must have disclosed name of the petitioners in the FIR.

5. Learned counsel for the State submits that material is there in the case diary showing involvement of the petitioners in the crime alleged and at the stage of framing of charges only



prima facie case is to be looked into which is already there. Evidentiary value and trustworthiness of the statement of the informant or her son would be considered at the stage of trial.

6. In the **State of Haryana & Ors Vs. Bhajan Lal & Ors**, reported in **1992 Supp. (1) SCC 335**, the Hon'ble Supreme Court laid down certain general rules for consideration of application under Section 482 Cr.P.C. or under Article 226 of the Constitution of India, illustrating certain categories of cases wherein the power in the aforesaid section can be exercised to quash the criminal proceeding. One of the categories was where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive to wreak vengeance on the accused and with a view to spite him due to private and personal grudge.

7. In the present case, personal and private grudge between the two families are there as criminal case was going on since last 16 years. The malicious prosecution of the petitioners is evident from the fact that one of the son of petitioner No.1, namely, Arjun Yadav is already accused with allegation that he had assaulted to the husband of the informant in presence of the informant. Both sides are neighbours. If the petitioners would have participated in the occurrence, informant must have disclosed



name of the petitioners also, who are family members of father and brothers of Arjun Yadav. At the belated stage of the investigation, such disclosure by the son of the informant apparently shows a case of malafide prosecution of the petitioners. Therefore, in my view, this is a fit case wherein power of this Court under Section 482 Cr.P.C. should be exercised to prevent the abuse of the process of the court.

8. Accordingly, the impugned order and the entire criminal proceeding against the petitioners stands quashed and this application stands allowed.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
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