

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20865 of 2015

Arising Out of PS. Case No.-241 Year-2000 Thana- MOTIHARI MUFASIL District- East
Champaran

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1. Iftkhar Ahmad @ Syed Iftkhar Ahmad
 2. Imtiyaz Ahmad @ Syed Imtiyaz Ahmad Sons of Late Syed Zaffar Hasnain @ Lal Babu Resident of Mohallla Teliya Patti, P.S.- Town Motihari, District- East Champaran
 3. Hargen Sahni S/o Deo Nandan Sahni
 4. Bhual Sahni S/o Badyanath Sahni
 5. Shiv Kumar Rai @ Shiv Kumar Yadav (in Chargesheet Shiv Pujan Rai)S/o Ram Chandra Rai
 6. Lallan Sahni S/o Ram Bhual Sahni
 7. Chain Devi W/o Hargen Sahni All resident of village- Fursatpur, P.S.- Mufassil, Motihari, District- East Champaran
 8. Ram Swaroop Rai @ Swaroop Rai (Incharge Sheet Swaroop Rai)S/o Late Ramanandan Rai Resident of village Bairia Gomasta Tola , P.S.- Mafassil, Motihari, District- East Champaran
 9. Chhathu Mahto @ Chhathu Pilwan S/o Late Babu Ram Mahto resident of Village- Pasithaniya, P.S. Manjholiya, District- East Champaran.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 29946 of 2015

Arising Out of PS. Case No.-241 Year-2000 Thana- MOTIHARI MUFASIL District- East
Champaran

SHAHNAZ BEGUM Wife of Jamil Akhtar Javed resident of Chikpatti, Motihari, P.S. Muffasil, District - East Champaran.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Iftkhar Ahmad Son of Jafar Hasnain
3. Imtiyaz Ahmad Son of Jafar Hasnain Both Resident of Telia Pathi
4. Hargen Sahni Son of Deonandan Sahni
5. Bhual Sahni Son of Baidyanath Sahni
6. Shiv Kumar Rai, Son of Ramchandra Rai,



7. Lalan Sahni Son of Bhual Sahni, All residents of village Fursatpur, P.S. Mufassil, District - East Champaran.
8. Swarup Rai, Son of Ramanand Rai, Resident of Village Bairiya, Gomasta Tola, P.S. Mufassil, District - East Champaran.
9. Chhathu Mahto @ Chhathu Hathwan Son of Late Babu Ram Mahto, resident of village Paithania, P.S. Majhauria, District - West Champaran.

... .. Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 20865 of 2015)

For the Petitioner/s : Mr. R.K.P. Singh, Adv
: Mr. Bal Bhushan Choudhary, Adv
For the Informant : Pandit Jee Pandey, Adv
: Mr. Ramendra Pati Tripathi, Adv

For the State : Mrs. Meena Singh, APP

(In CRIMINAL MISCELLANEOUS No. 29946 of 2015)

For the Petitioner/s : Mr. Umakant Shukla, Adv
: Mr. Shakti Suman Kumar, Adv
Informant : None
For the State : Mr. Murlidhar, APP

**CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT**

Date : 23-07-2019

Cr. Misc. No. 20865 of 2015.

Heard learned counsel for the parties.

2. The petitioners, in Cr. Misc. No.20865 of 2015, are accused in connection with Motihari Mufassil P.S. Case No. 241 of 2000. They have challenged the order of refusal of discharge passed under Section 239 Cr.P.C. on 23.03.2015.

3. Petitioner of, Cr. Misc. No. 29946 of 2015, is informant of the aforesaid police case and she is aggrieved by non-committal of the trial to the court of sessions in exercise of power under Section 323 Cr.P.C. by the same order dated 23.03.2015 passed in Motihari Mufassil P.S. Case No. 241 of 2000.



4. Contention of the petitioners in Cr. Misc. No. 20865 of 2015 is that there is admitted land dispute between the parties rather the informant of the case had brought a suit for partition vide Title Suit No.399 of 1985 against the petitioners, as such, the suit property which includes the plot referred in the FIR are joint family property and the petitioners had all the rights to go on the said property unless the partition takes place by metes and bounds.

5. It appears from the order of this Court at Annexure-4 passed in F.A.No.333 of 1992 that the said suit was decreed in favour of the informant on 06.06.1992 and against that judgment and decree F.A. No. 333 of 1992 is pending before this Court.

6. Contention is that when the matter is of civil dispute in the garb, to pressurize in the civil matter, criminal prosecution is abuse of the process of court. Moreover, the accused-petitioners were appointed receiver in the First Appeal, therefore, they were public servant in the eyes of law and any prosecution against them should have been launched only after proper sanction of the competent authority.

7. On the other hand, learned counsel for the informant submits that civil dispute is the reason for commission of criminal act by the accused person against the informant and the allegation in the FIR as well as material collected during investigation clearly



reveals the ingredients of cognizable offences for which charges have been ordered to be framed are made out. The probable defence of the accused cannot be looked into at this stage. Even a public servant is not expected to discharge the official duty in the manner alleged in the FIR. Moreover, the accused has not stated before the learned court below in their petition under Section 239 Cr.P.C. A copy at Annexure-6 that there was land dispute between the parties leading to a civil suit nor there is any mention of the decree passed in the civil suit and pendency of First Appeal challenging the decree of the trial court. Therefore, the learned court below on the basis of material in the case diary rejected the prayer of the petitioners. Even the case diary does not contain any material regarding pendency of the suit between the parties.

8. According to first information report of Motihari Mufassil P.S. Case No.241 of 2000 registered under Sections 147,148,149,341,323,354 and 379 I.P.C. the informant gave her fardbeyan in Dr. Rahman Nursing Home Intensive Care Unit before the police stating therein that on 09.12.2000. The accused person, namely, Iftexhar Ahmad armed with rifle, Imtiyaz Ahmad armed with Gun, Hargen Sahni armed with a pistol, Bhual Sahni armed with spear, Sheo Kumar Rai armed with a Gun, Lalan Sahni, Swaroop Rai armed with Lathi and Chhathu Pilwan



alongwith an elephant came to the field of the informant vide Plot No.474 gifted by her father in the year 1962. When the informant and her husband got this news, they reached at their field and forbade the accused person from cutting away the fodder. On that accused Iftekhar Ahmad ordered and accused-Imtiyaz with intent to commit murder fired at her husband, however, the husband got a close escape. Thereafter, on the order of Iftekhar Ahmad, the accused person attempted to outrage the modesty of the informant. Bhual Sahni and Lalan Shani threw her on the ground and started assault against her. Bhual Sahni caught her breast and torn her blouse. In the meantime, Hargen Sahni committed theft of gold locket and gold bangles as well as Rs.12,000/-cash. Other allegations are there that the elephant was also exhorted to commit murderous assault and the elephant put his leg on the chest of the informant which caused bleeding from the mouth. The case diary would reveal that besides husband of the informant, other witnesses have also supported the aforesaid allegation as eye witness of the occurrence.

9. After investigation, police submitted chargesheet against the petitioners for offences under Sections 147,148,149,341,323,325, 354 and 504 I.P.C. and cognizance order was passed.



10. On the basis of material disclosed in the FIR and corroborated during police investigation, I am also of the view that the prima facie cognizable offences are disclosed against the petitioners to compel them to face trial. The probable defence of the accused especially the defence regarding genesis of the allegation i.e. the civil suit going on between the parties cannot be gone into at this stage. It is evident that the aforesaid material was not before the police nor the same was raised before the learned court below, hence, that can be looked at the appropriate stage of the trial only.

11. I do not find any substance in the submission of the learned counsel for the petitioners that the issue of sanction against a public servant is a question of law. Hence, can be raised at any stage including for the first time at the stage of hearing of this application under Section 482 Cr.P.C. Whether some of the accused were appointed receiver in the case is itself a question of fact and the entire claim of being a public servant in the capacity of receiver is a mixed question of fact and law which cannot be gone into while exercising extraordinary power under Section 482 Cr.P.C. unless that issue was raised before the learned trial court.

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



Cr. Misc. No. 29946 of 2015

1. The prayer of the petitioner to commit the case to the court of sessions for trial was turned down by the learned court below for two reasons that the cognizance order was passed 11 years back taking cognizance for the offences whereunder chargesheet was submitted and no evidence was brought on the record to substantiate that prima facie case under Section 307 I.P.C. is made out. Moreover, the stage of the matter i.e. before charge, was not of an enquiry or a trial.

2. This Court is not going to disclose its mind whether on the basis of averment in the FIR a case under Section 307 I.P.C. is made out or not or whether it was a stage of enquiry. However, allows liberty to the petitioner to reagitate the issue after recording of prosecution evidence and the learned court below shall pass order according to law.

3. With the aforesaid observation, this application stands disposed of.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.07.2019
Transmission Date	25.07.2019

