

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1440 of 2017**

Arising Out of PS. Case No.-170 Year-2015 Thana- DESARI District- Vaishali

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1. Anita Devi Wife of Ram Kumar Thakur.
 2. Poonam Devi, Wife of Raj Kumar Thakur.
 3. Manita Devi, Wife of Shiv Kumar Thakur.
 4. Shiv Kumar Thakur, Son of Late Bhageru Thakur.
 5. Vikas Kumar Thakur @ Vikas Thakur, Son of Ram Kumar Thakur, All Resident of Village and P.O. Taiyabpur, Police Station Desari, District- Vaishali.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Usha Devi, Wife of Rajeev Kumar Thakur, Resident of Village and P.O. Taiyabpur, Police Station Desari, District- Vaishali.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Prafull Chandra Jha, Adv
For the Opposite Party/s	:	Mr.Sujeet Kumar Singh, APP
For the informant	:	Mr. Surendra Kishore Thakur, Y. Madhavi, Advocates.

**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER**

4 07-03-2019 Heard learned counsel for the petitioners, learned
Additional PP assisted by learned counsel for the informant.

2. Petitioners have challenged the order dated 28.09.2015 whereby and whereunder, they have been summoned to face trial for an offence punishable under Sections 314, 323, 354, 379, 447, 427, 504 and 34 of the IPC by Sri Dharmendra Singh, Judicial Magistrate-1st Class, Hajipur, Vaishali in connection with Desari PS Case No. 170/2015 (Tr. No. 6984/2015).



3. At the very outset, as is evident from the successive orders having been placed at the end of petitioners that only Shiv Kumar Thakur and Vikas Kumar Thakur (petitioners no. 4 and 5) have surrendered before the learned lower court. The presence of remaining petitioners is still awaited by the learned lower court.

4. It has been submitted at the end of learned counsel for the petitioners (in support thereof, Annexure-3 has been filed) that both the parties are *Pattidars* and being hostile to each other, they are under litigating terms since before. At an earlier occasion, Desari PS Case No. 42/2009 has been filed relating to kidnapping of Sudiksha which has been found false. The aforesaid Sudiksha did not support the case of kidnapping. After gap of six years in 2015, informant/OP No.2 has filed this case with false and frivolous allegations. It has also been submitted that partition suit is going on amongst the parties.

5. In the aforesaid background, it has been submitted that this happens to be malicious prosecution whereupon, petitioners should not be allowed to sustain the tremor of prosecution. Furthermore, it has also been submitted that after concluding investigation only petitioner no.4, Shiv Kumar Thakur and petitioner no.5, Vikas Kumar Thakur have been



charge-sheeted while petitioner no.1, Anita Devi, petitioner no.2, Poonam Devi and petitioner no.3, Manita Devi were not sent up for trial. Even then, the learned lower court summoned them. Apart from this, after going through the order impugned, it is evident that learned lower court had failed to properly identify the status of the petitioner nos.1, 2, and 3 and further, it was expected at the end of the learned lower court to have properly identify their status in consonance with the materials having been collected by the I.O. and submitted before the learned lower court in accordance with Section 173 CrPC, so the case of petitioners no.1, 2 and 3 happens to be on much better footing. Side by side, it also speaks with regard to non application of judicial mind by the learned lower court.

6. It has also been submitted that there happens to be inordinate delay in launching of the prosecution without any cogent reason. The cumulative effect did not justify the order impugned.

7. On the other hand, learned APP assisted by learned counsel for the informant emphatically controverted the submissions raised on behalf of petitioners and submitted that from narration of the written report, it is evident that prima facie case is found duly exposed therefrom along with sufficient



material having been collected by the I.O. during course of investigation and from the order impugned, it is also apparent that the learned lower court had gone through the case diary, perceived the material and then took cognizance of an offence and further summoned the petitioners to face trial on account of presence of sumptuous material. So, the order impugned speaks with regard to application of judicial mind and that being so, attracts no interference.

8. So far relevancy of Annexure-3 is concerned, it happens to be instituted at the end of one Amrendra Thakur while informant of the present case happens to be Usha Devi, Wife of Rajeev Kumar Thakur. There happens to be no connectivity duly identified at the end of the petitioners under the pleading nor during course of submission, learned counsel for the petitioners has been able to identify the same. Furthermore, though submission has been made at the end of petitioners that partition suit is pending but no document is there to substantiate the same.

9. Be that as it may, now the ingredients for quashing of an order of cognizance is settled at rest in the case of ***State of Hariyana & Ors. Versus Bhajan Lal & Ors*** as reported in ***AIR 1992 SC 604*** which is as follows:-



“(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."

10. In the aforesaid background, now the materials have to be seen. When the written report has been gone through, it is apparent that there happens to be specific disclosure at the end of the informant that the accused persons pounced upon her land, took control over the same and then cut away the standing trees. When she protested, they abused, slapped, snatched away her golden chain and then she was thrown over the ground and dragged. There happens to be specific disclosure thereunder that



her husband used to stay at Patna and on his arrival on 13.07.2015, the case has been instituted. Apart from this, the order impugned also discloses presence of sufficient material in the case diary which has not been controverted at the end of the petitioners. So, there happens to be presence of *prima facie* case and further in the background of deficiency at the end of petitioners themselves whereunder they could not succeed in flashing with regard to malicious prosecution in the background of so alleged prevailing animosity, ultimate result did not justify the submissions having at the end of the petitioners.

11. Consequent thereupon, instant petition lacks merit and is, accordingly dismissed. The stay granted earlier vide order dated 10.04.2017 stands vacated.

(Aditya Kumar Trivedi, J)

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