

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.2408 of 2017

Arising Out of PS. Case No.-277 Year-2015 Thana- SUPAUL District- Supaul

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1. Khushbu Devi wife of Shri Om Prakash Singh
 2. Puja Devi, wife of Shri Ram Prakash Singh,
 3. Nilam Devi, wife of Shri Shudhansu Shekhar Singh, All are residents of Village- Malikana, P.O.- Basbiti, P.S.District- Supaul.
 4. Jai Prakash Singh, son of Late Tribeni Prasad Singh,
 5. Saroj Devi, wife of Shri Jai Prakash Singh, Both resident of Village- Malikana, P.O.- Basbiti, P.S.District- Supaul, at present House No. A-8 Gali No. 4D Goila Vihar Goila Khurd near Sant Thomas School, New Delhi- 71.

... .. Petitioner/s

Versus

1. State Of Bihar and Anr
2. Renu Devi, wife of Shri Chandra Bhushan Singh, resident of Village- Sagka, P.S.- Gamaharia, District- Madhepura.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Amrit Abhijat, Adv
For the Opposite Party/s : Mr. Yogendra Kumar, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

8 26-04-2019 Heard learned counsel for the petitioners as well as learned APP.

2. Petitioners are aggrieved by an order dated 24.10.2016 whereby and whereunder petitioners along with others have been summoned to face trial for an offence punishable under Sections 147, 341, 323, 427, 354, 504 IPC by the learned CJM, Supaul in connection with Supaul PS Case No. 277 of 2015.

3. It has been submitted at the end of the petitioners



that from perusal of the FIR, it is evident that no offence is made out what to talk about *prima facie* whereupon the order impugned is absolutely contrary to the spirit of law. It has also been submitted that Title Suit No. 44/1997 has been decided in their favour (Annexure-3). As the finding of the Civil Suit prevails over the criminal proceeding, hence no prosecution would lie. It has also been submitted that prosecution party is in the habit to harass the petitioners and for that, apart from having reference in the First Information Report regarding presence of other cases, the judgment of another criminal case relating to Complaint Case No. 97C/1996 (Annexure-4) has also been tagged in order to show that the present prosecution happens to be a malicious one. Hence, the order impugned be set aside.

4. In its continuity, it has also been submitted that there was no material available before the learned lower court to summon the petitioners who were not sent up for trial. Hence, the order impugned to their interest is found against the settled principle of law.

5. Learned APP opposed the same and submitted that at the present stage only *prima facie* case has to be seen and the learned lower court has found the same. Accordingly, does not require interference.



6. OP No.2/informant filed a written report on 11.06.2015 disclosing therein that on the same day at about 10:00 AM, Jai Prakash Singh, Om Prakash Singh, Ram Prakash Singh, Sudhanshu Shekhar, Khushbu Devi, Puja Singh, Saroj @ Rinku Devi, Nilam Devi along with 15-20 unknown persons armed variously along with JCB machine came at her house and began to uproot which has been protested by her as a result of which, Jai Prakash Singh, Sudhanshu Shekhar caught hold of her, threw her on the ground, assaulted and further, outraged her modesty. Sudhanshu Shekhar further said that in spite of repeated direction, she has not compromised the sessions case so, she be given a lesson. Her husband and children came in her rescue who were also assaulted. The accused persons openly said that they will not allow her to stay in the village. Then thereafter, they looted away her belongings appertaining to Rs. 2 Lacs, dismantled her house. Then thereafter, took her as well as her husband to their place, tied down, tortured and only on an undertaking that they will not live in the villager furthermore, were released.

7. After registration of Supaul PS Case No. 277/2015, investigation commenced and after concluding the same, these petitioners, namely, Khushbu Devi, Puja Singh, Saroj @ Rinku



Devi, Nilam Devi were not sent for trial while others were by way of police report but, the learned lower court, after perusal of the case diary took cognizance of an offence and summoned the accused including the petitioners. The petitioners are aggrieved thereby, hence this petition.

8. So far competency of Magistrate is concerned, it has been settled at rest by consistent judicial pronouncements that after submission of police report in accordance with Section 173 of the CrPC, the Magistrate is not at all under compulsion to accept the same rather he has to exercise his judicial discretion whereunder, may accept the police report, may not accept, may directed further investigation. That means to say, after submission of the police report, there happens to be three options available before the Magistrate and the Magistrate may choose either of the three. In the present case, the Magistrate has not conceded with the police report so far these petitioners are concerned whereupon, the activity of the Magistrate could be said to be in pursuance of the settled principle of law.

9. In order to ascertain the authenticity in the submission of the learned counsel for the petitioner, case diary was called for and from perusal of the same, it is evident that *prima facie* material does exist against these petitioners also.



Though the petitioners no.1, 2, 3 and 5, namely, Khushbu Devi, Puja Singh, Nilam Devi, Saroj @ Rinku Devi have not been shown with specific allegation but, their presence happens to be a member of unlawful assembly having common object, could be under the banner of vicarious liability governed by Section 149 IPC.

10. So far petitioner no.4, Jai Prakash Singh is concerned, there happens to be consistency amongst the PWs with regard to his involvement during course of commission of the crime. Though, there also happens to be bleak theme of alibi in his favour. However, that happens to be the subject matter of the trial.

11. Consequent thereupon, the order impugned needs no interference. Instant petition is accordingly, rejected.

(Aditya Kumar Trivedi, J)

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