

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.12907 of 2015**

Arising out of P.S. Case No. - 217 Year - 2013 Thana - MADHUBANI COMPLAINT CASE  
District - Madhubani

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Birendra Kumar, Son of Late Subhag Lal Yadav, resident of village -  
Dhanauja, P.S. - Phulparas, in the district of Madhubani

... .. Petitioner/s

Versus

1. The State of Bihar
2. Lal Babu Yadav, Son of Ram Subran Yadav, resident of village - Bahuarwa,  
P.S. - Phulparas in the district of Madhubani

... .. Opposite Party/s

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**Appearance :**

|                      |   |                                                                                   |
|----------------------|---|-----------------------------------------------------------------------------------|
| For the Petitioner/s | : | Mr. Akhileshwar Prasad Singh, Sr. Advocate<br>Mr. Surendra Prasad Singh, Advocate |
| For the O.P. No. 2   | : | Mr. Rajendra Narayan, Sr. Advocate<br>Mr. Lakshmindra Kumar Yadav, Advocate       |
| For the State        | : | Mr. Shyam Kumar Singh, APP                                                        |

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

**Date : 30-07-2019**

Heard learned counsel for the parties.

2. Petitioner is accused in Complaint Case No. 217 of 2013 wherein cognizance was taken by the learned Judicial Magistrate, 1<sup>st</sup> Class, Jhanjharpur on 02.12.2013 for offences under Sections 323, 379, 504/34 of the Indian Penal Code and issued summons against the petitioner to face trial. The petitioner challenged the aforesaid order before the learned Sessions Judge, Madhubani in Cr. Revision No. 06 of 2014. The criminal revision was also dismissed on 14.11.2014.



3. In this application, under Section 482 Cr.P.C., both the orders of cognizance as well as of revisional court are under challenge.

4. Submission of the learned counsel for the petitioner is that due to personal vendetta, the complainant has been set up by the full-brother of petitioner, namely, Surendra Kumar with whom civil dispute is going on. The trivial nature of allegation has been levelled, just to harass the petitioner.

5. On the other hand, learned counsel for the opposite party no. 2 submits that this application, under Section 482 Cr.P.C., is in the guise of second revision application which is barred under sub-section 3 of Section 397 Cr.P.C. and the law has been settled in a catena of decisions that in such type of cases, the Court can interfere, in exercise of power, under Section 482 Cr.P.C., only when the impugned orders clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by this Court is absolutely necessary.

6. According to complaint petition on 30.03.2013, the complainant was carrying five kilograms of milk for monthly customer, namely, Surendra Kumar, a co-villager. As soon as the complainant reached near the house of the petitioner, he asked that



entire milk be left at his house as some people are there who are to be served with the milk. When the informant resisted on the ground that the milk was for the regular customer, the petitioner allegedly assaulted with *butt* of the pistol and snatched rupees five thousand from his possession. The inquiry witnesses examined under Section 202 Cr.P.C. supported the allegation aforesaid as eye-witness of the occurrence.

7. Trustworthiness of the inquiry witnesses cannot be tested at this stage only for the reason that one of the witnesses i.e. Surendra Kumar is the full-brother of the petitioner and another witness is son of the complainant. The motive for allegation and trustworthiness of the allegation can be examined at the appropriate stage of the trial.

8. In my view, there is no merit in this application as no failure of justice is going to be caused by allowing the prosecution of the petitioner. Hence, this application stands dismissed as devoid of any merit.

**(Birendra Kumar, J)**

Kundan/-

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