

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.7080 of 2015

Arising Out of PS. Case No.-2312 Year-2012 Thana- WEST CHAMPARAN COMPLAINT
District- West Champaran

=====

Arjun Prasad Son of Kedar Prasad Resident of village - Kalibagh Main Road,
Ram Janki Mandir, P.O. P.S. Bettiah Town, District - West Champaran

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Binod Kumar Son of Kedar Prasad Resident of village - Kalibagh Main Road, Ram Janki Mandir, P.O. P.S. Bettiah Town, District - West Champaran

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Siya Ram Shahi, Advocate
Ms. Shally Kumari, Advocate
For the Opposite Party/s : Mr. Anita Kumari Singh, APP

=====

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT
Date : 02-07-2019

Heard learned counsel for the petitioner, learned
Additional Public Prosecutor for the State and learned counsel
for Opposite Party No.2.

2. This is an application under Section 482 Cr.P.C.
against the order of cognizance and issuance of summons
passed on 28.10.2014 in complaint Case No.2312(c) of 2012 by
the learned Judicial Magistrate, 1st Class, Bettiah, whereunder
the petitioner has been asked to face trial.

3. Opposite Party No.2 is informant of Bettiah
Town P.S. Case No.243 of 2012 alleging therein that some
unknown persons entered into his house and committed theft of



mobile phone and cash. The informant expressed suspicion that his neighbour Arjun Prasad under a conspiracy with the help of unknown persons managed the aforesaid occurrence of theft.

4. It is worth to mention that petitioner Arjun Prasad is the full brother of the informant and the fact was deliberately suppressed in the FIR.

5. After investigation the police did not send up the petitioner for trial. However, on the basis of protest petition filed in the case the learned Court-below proceeded to inquire into the matter under Section 202 Cr.P.C. In the statement on oath the informant stated that two to three persons entered into his house and he saw that they committed theft of cash and mobile phone and they fled away towards the house of this petitioner. The inquiry witness Manoj Kumar stated that the complainant disclosed to him that the petitioner was seen while he was fleeing after committing the theft. Thus, this witness is a hearsay witness. Another witness Druv Prasad stated that he had not seen the occurrence. He had simply heard that theft was committed in the house of Binod Kumar. Same is the statement of witness No.3 Manoj Kumar son of the Satrugna Kumar. He has also stated that he had not seen the occurrence. Witness Ashok Kumar Verma also did not support the allegation



that the petitioner was perpetrator of the crime. Witness Raj Kumar stated that Binod had disclosed to him that this petitioner has committed the crime. This witness is also a hearsay witness. The son of the informant Subham Kumar has admitted that the petitioner is his uncle. He has not stated specifically that the petitioner has committed the theft. Thus, the only witness of the occurrence is the complainant who has not stated anything against the petitioner in his statement on oath in the Complaint case nor in FIR save and except that unknown criminal fled away towards the house of the petitioner.

6. Submission is that property dispute is motive for false implication and malicious prosecution. There is no evidence at all for summoning the petitioner.

7. Learned counsel for the complainant submits that at the stage of issuance of process only prima facie case is to be established disclosing cognizable offence. At the state of cognizance, meticulous appreciation of evidence is not permissible nor this Court can substitute its own opinion on the opinion of the Court-below.

8. Since the order of cognizance and issuance of summons has been passed without material on the record to substantiate that the petitioner was involved in the occurrence



alleged and a material fact has been suppressed by the complainant that the petitioner is full brother of the complainant.

9. Therefore, in my view, the continuance of entire criminal proceedings in pursuance of the impugned order is an abuse of the process of the Court. In the result, the same is quashed and the application is allowed.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.07.2019
Transmission Date	06.07.2019

