

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.43514 of 2013

Arising Out of PS. Case No.-148 Year-2008 Thana- WAJIRGANJ District- Gaya

1. Gulam Nabi Khan @ Gulam Nabi Son of Late Mahmud Khan Resident Of Village - Tarwan Tola Bhaluhai, P.S.- Wazirganj, District – Gaya.
2. Waris Khan Son Of Late Razzaque Khan Resident Of Village - Tarwran Tola Bhaluhai, P.S.- Wazirganj, District - Gaya
3. Tanwar Khan @ Tanweer Alam Son Of Gulam Nabi Khan Resident Of Village - Tarwan Tola Bhaluhai, P.S.- Wazirganj, District - Gaya
4. Anwar Khan Son Of Gulam Nabi Khan Resident Of Village - Tarwan Tola Bhaluhai, P.S.- Wazirganj, District - Gaya
5. Jahangir Khan Son Of Gulam Nabi Khan Resident Of Village - Tarwan Tola Bhaluhai, P.S.- Wazirganj, District - Gaya
6. Wasi Khan Son Of Late Razzaque Resident Of Village - Tarwan Tola Bhaluhai, P.S.- Wazirganj, District - Gaya

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Abdul Rahim Khan Son Of Late Rajab Ali Khan Resident Of Village - Tarwan Tola, Bhaluahi, P.S.- Wazirganj, District - Gaya

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Nand Kishore Prasad Sinha, Advocate

For the State : Mr. Sunil Kumar Pandey, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 29-03-2019

Heard learned counsel for the petitioners and learned
A.P.P. for the State.



2. Despite opposite party no. 2 having entered appearance and name of learned counsel also printed in the cause list, nobody appeared when the matter was taken up and heard.

3. The petitioners have moved the Court under Section 482 of the Code of Criminal Procedure, 1973 for the following relief:

“That this is an application for quashing the order dated 17.7.2013, passed by the learned Chief Judicial Magistrate, Gaya in Wazirganj P.S. Case no- 148/2008 State Vs. Abwar Khan and 8 others having its G.R. case no- 1671 of 2008 by which cognizance has been taken under section 147, 341, 323, 447, 324, 307 I.P.C. against the petitioners where nothing was found against the petitioners during the course of investigation and final form has been submitted against the petitioners and without any material and without taking any evidence the cognizance has been taken against the petitioners of misuse of the process of the court and thus vitiated.”

4. The allegation against the petitioners and three others is of assault, and against the remaining three accused who are not before this Court in the present application, of specific overt act by sharp edged weapons.

5. Learned counsel for the petitioners submitted that the parties are agnates and there is land dispute between them. It was submitted that even the police after investigation has found the case not true against the petitioners and, thus, they were not sent up for trial and charge sheet was submitted against the remaining



three accused only, but despite that the Court has taken cognizance against the petitioners also. Learned counsel submitted that the allegation, at best, against the petitioners is general and omnibus. It was further submitted that with regard to the injuries which may be of some consequence, the report with regard to such injuries corroborates with the allegation made against the remaining three co-accused with regard to the specific and overt act of assault by sharp edged weapons and not against the petitioners.

6. Learned A.P.P., upon going thorough the case diary, does not dispute the aforesaid position.

7. In view thereof, the Court finds that a case for interference has been made out. On a tenuous ground of general and omnibus allegation of assault, that too, not corroborated by the injury report and there admittedly being land dispute between the parties who are agnates, the Court finds that letting the criminal case to continue against them is an abuse of the process of the Court. The police after detailed investigation did not find any material so as to forward the petitioners for facing trial and, thus, they were not chargesheeted.

8. Accordingly, the application is allowed. The entire criminal proceeding arising out of Wazirganj P.S. Case No. 148 of 2008 (G.R. Case No. 1671 of 2008), including the order dated



17.07.2013, by which cognizance has been taken, as far as it relates to the petitioners, stands quashed.

(Ahsanuddin Amanullah, J)

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