

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.3437 of 2016

Arising Out of PS. Case No.-295 Year-2013 Thana- BEUR District- Patna

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1. Ajay Shankar Thakur @ Vinit Kumar
 2. Dr. Mani Shankar Thakur @ Manish Kumar, Both sons of Sri Surya Narayan Thakur
 3. Navnit Kumar Thakur @ Sonu Kumar, son of Sri Navendra Thakur @ Navin Kumar
 4. Navendra Thakur @ Navin Kumar, son of Sri Jay Narayan Thakur, All resident of Mohalla Mahavir Colony, P.S. Beur, District - Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ritesh Kumar, son of Raj Kishore Pandey, resident of Mohalla Mahavir Colony, P.S. Beur, District - Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Sandeep Kumar, Advocate Mr. V.N. Singh, Advocate Mr. Rohit Raj, Advocate
For the O.P. No. 2	:	Mr. Jagdish Prasad, Advocate
For the State	:	Mr. Madan Kumar, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 24-07-2019

Heard learned counsel for the parties.

2. Petitioners are accused in connection with Beur P.S.

Case No. 295 of 2013 corresponding to Trial No. 234 of 2015. They have challenged the order of cognizance dated 10.07.2015 passed by the learned Judicial Magistrate, 1st Class, Patna whereby the learned court below has taken cognizance against the petitioners for offences under Sections 447, 341, 323, 324, 307, 504 and 34 of the Indian Penal Code.



3. According to fardbeyan recorded on 16.12.2013 at Uday Narain Nursing Home, the informant stated that on 15.12.2013, he was sitting in the rented premise of landlord Sachida Nand Singh. The damaged garage which was causing inconvenience in movement of the vehicles was being repaired and slop was being made by the labourers. Wife of Sachida Nand Singh, namely, Veena Devi was monitoring the work. At the same time, the neighbours, who are petitioners herein, came thereat and started abuse and thereafter they caught Veena Devi. Then the informant and his elder brother Rajesh Kumar ran for rescue. Thereafter, petitioner Navin thrashed to Rajesh Kumar and petitioner Sonu and Nigam caught the informant and on the order of Navin, Dr. Manish Shankar assaulted with *Khanti* (a weapon of cutting) at the head of the informant causing injury at the face and nose. After investigation, the police submitted charge sheet and cognizance was taken accordingly.

4. The challenge is on the ground that the criminal proceeding is abuse of the process of the Court as the same has been lodged, just to pressurize in civil dispute between the parties.

5. Submission is that Title Suit No. 668 of 2013 is going on between Devnagar Devi, wife of Surya Narain Thakur versus Vina Devi, wife of Sachida Nand Singh. Further contention is that the informant had got treatment at the Advanced Neuro Diagnostic



Centre where he disclosed that he sustained injury by fall from moving bike. The injury report is at Annexure-3.

6. Learned counsel for the opposite party no. 2 submits that opposite party has no knowledge of the said injury report, rather the same appears to be a fabricated one. The petitioners never produced the same before the police during investigation of the case so that the police could have investigated the genuineness of the same, rather the case diary would reveal that real injury report of treatment of the informant is already there. Only pendency of civil suit would not absolve the petitioners from criminal liability, if the ingredients of commission of cognizable offence are apparently made out.

7. Learned counsel for the petitioners has referred the judgment of the Hon'ble Supreme Court in **Rajiv Thapar and Others Versus Madan Lal Kapoor** reported in **2013(3)SCC 330**, the Hon'ble Supreme Court in Rajiv Thapar's case (**supra**) reiterated the legal principle that at this stage, neither truthfulness of the allegations levelled by complainant can be evaluated, nor can weight of defence evidence be determined. Where allegations bring out all ingredients of the charge/charges levelled, and material placed before the Court prima facie shows truthfulness of the allegations, the trial must proceed even when accused is successful in raising some suspicion or



doubt in the allegations levelled. This is so because it would result in giving finality to the accusations levelled by the prosecution.

8. Learned counsel has placed reliance on case of **All Cargo Movers (1) Pvt. Ltd. & Ors. vs. Dhanesh Badamal Jain & Anr.** reported in **2008(1) PLJR SC 51** for his submission that criminal proceedings should not be encouraged, when it is found to be mala fide or otherwise an abuse of the process of the Court. It is easy to allege mala fides and difficult to prove. The civil dispute may give rise to criminal act or even false criminal prosecution.

9. At this stage, this Court cannot evaluate as to whether the allegations of criminal offence, which have been supported by other evidences, are true or not and acceptable or not in view of the civil dispute between the parties. Hence, I do not find any merit in this application. Accordingly, it stands dismissed.

(Birendra Kumar, J)

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AFR/NAFR	N.A.
CAV DATE	N.A.
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