

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.3190 of 2017

Arising Out of PS. Case No.-1780 Year-2005 Thana- BEGUSARAI COMPLAINT CASE
District- Begusarai

=====

Rishikesh Kumar Son of Ram Bilash Singh Resident of Village- Shyampur,
P.S. Chhaurahi, District Begusarai.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Santosh Singh Son of Ram Bilash Singh Resident of Village- Shyampur, P.S.
Chhaurahi, District Begusarai.

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr.Shailendra Kumar

For the Opposite Party/s : Mr.Ajay Kumar-1

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 29-03-2019 Heard learned counsel for the petitioner as well as
learned Addl.P.P.

2. Petitioner has asked for quashing of the order dated 04.10.2016 passed by Sri Uma Shankar Narayan, Judicial Magistrate, Ist Class, Majhaul, Begusarai in Complaint Case no. 1780C of 2005 whereby and whereunder petition purported to be under section 245(1) of the Cr.P.C filed on behalf of the petitioner has been rejected.

3. Learned counsel for the petitioner has submitted that during course of exercising of power under section 482 of the Cr.P.C, High Court is not circumvent with stage rather, to do justice, whatever stage of the case may be, the High Court may



interfere. That being so, only the order impugned could be adjudicated upon, rather the whole prosecution be adjudged. So submitted that irrespective of having stage of the case at 245 of the Cr.P.C overall consideration should be done by the High Court under the garb of power so prescribed under section 482 of the Cr.P.C and, further elaborating on that score, it has been submitted that it happens to be a malicious prosecution, intentionally, purposely filed by the elder brother on account of being annoyed, as the petitioner had helped his father who in order to protect himself filed complaint petition against opposite party no.2 and in retaliation, opposite party no.2 filed a case against his father by his wife and then, got this case filed against the petitioner by himself in the background of property dispute.

4. It has further been submitted that aforesaid fact should have been taken into consideration by the learned lower court but having been ignored, should be considered by the High Court for proper appreciation which is entertainable under the guise of section 482 Cr.P.C. Also submitted that there happens to be inconsistency amongst the evidence of the witnesses which the learned lower court ignored at the stage of section 245 Cr.P.C. It has also been submitted that there should have been meticulous scrutiny of the evidence and has there



been, no occasion was left for learned lower court to reject the petition. So, order impugned is fit to be set aside.

5. Learned Addl. P.P. opposed the submissions.

6. In a warrant trial based upon complaint petition, first of all, the complainant is to produce witnesses before charge in accordance with section 244 Cr.P.C. Apart from having power vested to the court to discharge the accused at any earlier stage in the fact and circumstance of the case, after examination of the witnesses in accordance with section 244 Cr.P.C, the Magistrate has to see whether evidence having produced on behalf of the complainant if unrebutted would warrant conviction. If so, there will not be question of discharge. That happens to be the sole criteria to be considered during course of stage governed under section 245 Cr.P.C. Meticulous scrutiny of the material is always permissible at the stage of trial. So, mode of consideration of the evidence having at the stage of framing of the charge as well as at the stage of final consideration are quite distinct as well as independent to each other. The aforesaid exercise is itself recognized under Cr.P.C.

7. True, it is that power under section 482 of the Cr.P.C is to be exercised by the High Court in order to give effect of the order passed under the Code or to prevent abuse of



the process of the court or to secure ends of justice. That does not mean that during the course of exercising its power under section 482 Cr.P.C, the High court will unnecessarily interfere and will dismantle the frame work as prescribed under law. Because of the fact that the learned lower court, as is evident from the order impugned followed the right path so prescribed in accordance with section 245 Cr.P.C, while considering the evidence of two Pws so examined before charge, did not warrant interference.

8. Accordingly, instant application lacks merit and it is dismissed.

(Aditya Kumar Trivedi, J)

s.hassan/-

U		T	
---	--	---	--

