

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.83670 of 2019

Arising Out of PS. Case No.-524 Year-2019 Thana- EAST CHAMPARAN COMPLAINT
District- East Champaran

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1. SANJIT KUMAR TIWARI @ SANJIT TIWARI Son of Late Hari Narayan Tiwari Resident of Village - Sugawn, P.S.- Sugauli, District- East Champaran
 2. Tarkeshwar Tiwari Son of Late Hari Narayan Tiwari Resident of Village - Sugawn, P.S.- Sugauli, District- East Champaran
 3. Kalawati Kunwar Wife of Late Hari Narayan Tiwari Resident of Village - Sugawn, P.S.- Sugauli, District- East Champaran
 4. Manisha Devi @ Santoshi Devi Wife of Sanjit Kumar Tiwari @ Sanjit Tiwari Resident of Village - Sugawn, P.S.- Sugauli, District- East Champaran
 5. Urmila Devi Wife of Tarkeshwar Tiwari Resident of Village - Sugawn, P.S.- Sugauli, District- East Champaran

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Brijeshwar Tiwari Son of Chaturgun Tiwari Resident of Village - Sugaun, P.S.- Sugauli, District- East Champaran

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Anil Kumar
For the Opposite Party/s : Mr.Tarun Prasad Mandal

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

2 17-12-2019 This application has been filed for quashing or order dated 3.5.2019 passed by the learned Judicial Magistrate Ist Class, East Champaran at Motihari in Complaint Case No.C-524 of 2019 whereby and whereunder after inquiry finding *prima facie* case under Seciton 323, 504 read with Section 34 of the Indian Penal Code and Section ¾ of the Prevention of Witch (Daain) Practices Act 1999 .



Case in short is that a complaint petition was filed against the petitioners stating that they started abusing the complainant calling Daain and assaulted by leg and fists and started administering night-soil in the mouth of the complainant on the ground that the complainant has killed the guardian of the accused Hari Narayan Tiwari . It further appears that the complaint was examined at essay and three witnesses have been examined and thereafter finding a prima facie case under the above Sections, processes were directed to be issued against these petitioners, which has been challenged by the petitioners in this application.

Ground for quashing as per the petitioner sis that some of the witnesses have not identified the accused petitioners and moreover one of the accused was residing outside and another accused was at that time pregnant and in the family way and the evidence also shows that they are agnates and there is land dispute between them and as such continuation of this proceeding will only abuse of the process of the court and also mala fide of the prosecution.

On the other hand the learned counsel for the APP has opposed this application on the ground that after perusal of the complaint petition and the witnesses examined during the



inquiry a prima facie case is made out against the accused persons under Section 323 and 504 of the IPC with Section 34 of the IPC and also under Section 3/4 of the Prevention of Witch (Daain) Practices Act 1999 and this is not the stage to consider the defence of the petitioners .

Having heard both sides and considering the materials available on the record including the complaint petition and the statement of the complainant on solemn affirmation as well as statement of the witnesses examined during the course of inquiry under Section 202 of the Cr.P.C. it appears that there are allegations of calling the complainant as *Daaine* and also of assault to her and further allegation of administering night soil to her and though there are some contradictions in the evidence but that can not be looked into at this stage.

In view of the above there is *prima facie* evidence against the appellants.

As such I find no merit in this application. Accordingly, this application is dismissed.

(Vinod Kumar Sinha, J)

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