

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.83352 of 2019

Arising Out of PS. Case No.-51 Year-2019 Thana- GOPALGANJ COMPLAINT CASE
District- Gopalganj

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1. Arbind Dubey @ Arvind Kumar Dubey Son of Awadh Dubey Resident of Village - Sareya Pahar, P.S.- Sidhwalia, District - Gopalganj.
 2. Mithun Kumar Dubey @ Praveen Kumar Dubey @ Praveen Dubey Son of Awadh Dubey Resident of Village - Sareya Pahar, P.S.- Sidhwalia, District - Gopalganj.
 3. Akhilesh Kumar Dubey @ Akhilesh Kr. Dubey Son of Radha Dubey Resident of Village - Sareya Pahar, P.S.- Sidhwalia, District - Gopalganj.
 4. Ramashray Dubey Son of Chandrika Dubey Resident of Village - Sareya Pahar, P.S.- Sidhwalia, District - Gopalganj.
 5. Dhiraj Dubey Son of Ramashray Dubey Resident of Village - Sareya Pahar, P.S.- Sidhwalia, District - Gopalganj.
 6. Niraj Kumar Dubey @ Geri Dubey Son of Ramashray Dubey Resident of Village - Sareya Pahar, P.S.- Sidhwalia, District - Gopalganj.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Shatrudhan Das Son of Dashrath Das Resident of Village - Sareya Pahar, P.S.- Sidhwalia, District - Gopalganj.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Javed Aslam
For the Opposite Party/s : Mr.Sanjay Kumar Tiwary

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 06-01-2020

Heard learned counsel for the parties.

This application has been filed under Section 482 of the Cr.P.C for quashing the order dated 19.03.2019 passed by learned ADJ-I, Gopalganj, in Complaint Case No. 51 of 2019, by which learned court below took cognizance against the accused-petitioners for the offence punishable under Sections



147, 323 and 504 of the Indian Penal Code and Section 3(i)(r) of the SC/ST Act.

Complainant in his written complaint addressed to the CJM, Gopalganj, has alleged that accused-petitioners objected the construction of his Latrine and when he did not stop the construction work, on 28.11.2018 at about 9:00 pm when he along with his family members was sitting at his door, all the accused persons came and started abusing him by his caste name and when he protested they started assaulting him and when his wife came to save him accused Dhiraj Dubey snatched her Mangalsutra worth Rs. 10,000/- and Gedi Dubey took away briefcase containing Rs. 80,000/-. On raising alarm, neighbours assembled there then the accused-petitioners fled away.

On the basis of said written complaint and statement of witnesses the Court found *prima facie* case to be made out against the petitioners and by order dated 19.03.2019 took cognizance against the accused-petitioners under Sections 147, 323 and 504 of the Indian Penal Code and Section 3(i)(r) of the SC/ST Act, and issued summons for their appearance to face trial.

At the stage of taking cognizance the court has to form an opinion on the basis of materials available on record that



whether a *prima facie* case is made out against the accused or not.

The defence of the accused cannot be considered at the time of taking cognizance. This Court in its inherent jurisdiction cannot substitute its view regarding sufficiency or adequacy of material before the court below at the time of taking cognizance and issuance of summons against accused as same is within exclusive domain of trial court, as such I am not inclined to interfere with the order dated 03.06.2019 passed by learned ACJM, Sherghati, Gaya.

However, the petitioners will be at liberty to raise all the issues raised before this Court as well as other points available to them in accordance with law at subsequent stage i.e. at the time of framing of charge. The court below shall also take into account the report of the Circle Officer.

Subject to the aforesaid observation and liberty, this application is disposed of.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.01.2020
Transmission Date	08.01.2020

