

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.87383 of 2019

Arising Out of PS. Case No.-135 Year-2017 Thana- MUZFFARPUR COMPLAINT CASE
District- Muzaffarpur

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1. SANTOSH KUMAR Son of Rajendra Sah, Resident of Village - Yogiamath, P.S.- Nagar (Town), Distt - Muzaffarpur.
 2. Naresh Kumar Rai @ Naresh Rai Son of Sri Ramlali Rai, Resident of Village - Yogiamath, P.S.- Nagar (Town), Distt - Muzaffarpur.
 3. Surendra Kumar @ Pappu Son of Sri Govind Prasad, Resident of Village - Yogiamath, P.S.- Nagar (Town), Distt - Muzaffarpur.
 4. Praveen Kumar Jha @ Pappu Jha Son of Surendra Jha, Resident of Village - Yogiamath, P.S.- Nagar (Town), Distt - Muzaffarpur.
 5. Lalbabu Sah Son of Late Sita Ram Sah, Resident of Village - Yogiamath, P.S.- Nagar (Town), Distt - Muzaffarpur.
 6. Randhir Prasad Singh @ Kishore Singh @ Kishore Son of Late Ram Ekbal Singh, Resident of Village - Yogiamath, P.S.- Nagar (Town), Distt - Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Lal Babu Rajak Son of Sri Vishwanath Rajak Resident of Mohalla - Barkikarbala, P.S.- Nagar (Town), Distt - Muzaffarpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Nitu Kumari
For the Opposite Party/s : Mr.Usha Kumari 1

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 07-01-2020

The present petition has been filed for quashing the order taking cognizance dated 20.12.2018 passed by the learned Spl. Judge, SC/ST, Muzaffarpur in C. No. 135 of 2017/ Trial No. 563 of 2018, whereby and whereunder the learned court below has taken cognizance against the petitioners for the offence punishable under Sections 324, 504, 387 of the Indian Penal Code and Section 3(i) (X) of the SC/ST (Prevention of Atrocities) Act, 1989.



2. The brief facts of the case are that a complaint is stated to have been filed by the complainant of this case before the learned court of Spl. Judge SC/ST, Muzaffarpur bearing Complaint Case No. 135 of 2018, wherein it has been alleged that the father of the complainant, namely, Vishwanath Rajak, aged about 75 years, in the year 2013, having been in need of money, had talked to the petitioner No.1 regarding sale of his land whereafter, the accused persons had prepared an agreement for sale on Fifty rupees Non-judicial stamp paper and paid advance money as also in the said agreement, the last date was fixed as 31st December, 2013, however, the accused persons failed to get the sale deed executed and did not pay the balance amount of sale consideration on the pretext that they were not able to arrange a purchaser for the said land. Thereafter, the father of the complainant, in the year 2014-15 and in the year 2017 sold his land as per the advice of the accused persons and then the commission was paid to the petitioner no.1 and the accused no.1 assured to pay the balance amount of consideration money pertaining to the sale deed dated 06.06.2014 and 11.06.2014, however, accused no.1 did not pay a sum of about Rs. 1,50,000/- (Rs. One lakh fifty thousand), resulting in the complainant demanding the balance amount of sale



consideration from the accused no.1 on a regular basis. It is alleged in the complaint petition that on the date and time of occurrence, the complainant, for the purposes of some work, was going to Bairiya and when he reached near Dhobiyaaghat situated at Sikandarpur, the accused persons i.e. the petitioners had arrived there and surrounded the complainant as also had started assaulting the complainant and when the friend of the complainant, namely, Chand came to save him, the petitioners no.3 and 5 herein started abusing the said Md. Chand as also assaulted him, whereafter the accused persons had abused the complainant and his friend by calling their caste name i.e. "Sala Dhobiya" as also had stated that they had become rich and had dared to make a complaint before the Dy. S.P., hence they should be killed and thrown there itself. The accused no.1 had then taken out a sum of Rs.700/- from the pocket of the complainant. It is further alleged that in the meantime, the witnesses and other people passing by had assembled and saved the complainant and his friend from being killed. It is alleged that the accused persons had called the complainant and his friend by their castes name, hence had insulted them in public view, resulting in commission of crime under the provisions of the SC/ST (Prevention of Atrocities) Act, 1989.



3. It appears that the learned Special Judge (SC/ST), Muzaffarpur had conducted an enquiry, recorded the statement of the complainant on oath as also had examined three complaint witnesses i.e. Md. Chand, Md. Kaushar and Upendra Thakur, who have all supported the allegations levelled by the complainant in the complaint petition and only after perusal of the statement of the complainant recorded on oath as also upon consideration of the evidence led by the complainant by way of recording of statement of three complaint witnesses, the learned Special Judge, SC/ST, Muzaffarpur has come to a conclusion that a *prima facie* case is made out, hence, has taken cognizance against the accused persons i.e. the petitioners herein for the offence under Sections 323, 504 and 387 of the Indian Penal Code and Section 3(i)(x) of the SC/ST Act.

4. The petitioners herein, being aggrieved by the aforesaid order dated 20.12.2018, have preferred the present quashing petition alleging therein that firstly, land dispute is pending in between the parties, hence the case is of civil nature, thus taking cognizance of criminal offence by the learned court below is an abuse of the process of the court. The learned counsel for the petitioners has further submitted that no offence, as alleged by the complainant, is made out under the provisions



of the SC/ST Act since the occurrence did not take place in public view. It is also submitted that the present case has been filed in retaliation of the earlier case filed by the petitioners against the Opposite Party no.2.

5. I have heard the learned counsel for the parties and perused the materials on record including the complaint petition, the statement of the complainant recorded on oath as also the evidence adduced by the three witnesses produced by the complainant apart from the impugned order dated 20.12.2018 passed by the learned court below.

6. At this juncture, it would be relevant to state that it is a well settled law that at the time of cognizance, the learned court below is only required to see as to whether on the basis of materials collected during the enquiry, *prima facie* offences are made out or not, so as to proceed against the accused persons and the defence of the accused persons cannot be looked into at the stage of taking cognizance.

7. Thus, this Court is of the considered opinion that since a *prima facie* case has been made out against the petitioners herein, as aforesaid, the learned court below has rightly taken cognizance against the petitioners herein. This Court is of the further view that it is not the case of the



petitioners that the order of cognizance is without jurisdiction or there is any technical error. The only argument which has been advanced on behalf of the petitioners is that the matter is required to be examined on merits, however, this Court is of the opinion that since the Code of Criminal Procedure itself provides certain remedies to the accused persons, order of cognizance, in absence of any illegality, is not required to be interfered with.

8. Considering the aforesaid facts and circumstances of the present case as also there being no apparent error in the impugned order dated 20.12.2018, this Court is of the opinion that the impugned order dated 20.12.2018 does not suffer from any infirmity so as to warrant any interference, hence the present petition stands dismissed, however, with an indication that the petitioner may take all the pleas, which have been taken in the present petition, at an appropriate stage i.e. at the stage of framing of charge by the learned court below.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	25.02.2020
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