

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.8337 of 2015

Arising Out of PS. Case No.-1532 Year-2010 Thana- WEST CHAMPARAN COMPLAINT
District- West Champaran

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1. Madhusudan Mani Tripathi and Ors son of late Vindhyachal Mani Tiwari Resident of village New Colony, Adarsh Nagar Koiri Tola, p.s- Bettiah Town District- West champaran.
 2. Adya Kumar Sharma @Adya Sharma Scout Trainer son of Late Rampati sharma Resident of Semra Hardo, P.s- Kuber, Sthan, District- kushinagar, At preset Ujjain Tola, p.s. Bettiah Town District West Champaran.
 3. Umeshwar Thakur Scout Guide Son of Saryu thakur Resident of club Road, Near Petrol Pump, Jubba Sahni Park, P.s- Mithanpura, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Satendra Kumar Baitha son of Mr. Munnilal Baitha Resident of Madhuchhapara, P.s- Pipara Kothi, District- East Champaran. At present - Adrash Bipin Middle School Hospital Road, Bettiah, P.s- Bettiah Town District- West Champaran.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Bimlesh Kumar Pandey, Advocate
For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

8 13-02-2023 Learned counsel for the petitioners submits that the petitioner no.2 has died, therefore, he is permitted to withdraw the application so far as the petitioner no.2 is concerned.

None appears for the opposite party no.2 despite the valid service of notice as has been noted earlier proceedings.

The present application has been filed for quashing the order dated 31.05.2013 passed by learned Judicial Magistrate, 1st Class, West Champaran, Bettiah, in Tr. No. 2676



of 2014 (arising out of Complaint Case No.1532 (c)/2012 by which the learned Judicial Magistrate, 1st Class, Bettiah, West Champaran has taken cognizance under Section 341, 323, 504/34 of the Indian Penal Code.

It is the case of the petitioners that Hajipur P.S. Case No.584 of 2009 was filed by the informant/opposite party no.2 against the petitioners making allegations under the SC/ST Act and other provisions of the Indian Penal Code. It was alleged by the informant that the petitioners had abused him by taking caste name. It was further alleged that F.I.R. was filed after delay of three years, since informant was trying to settle the dispute through *panchayati*.

The police investigated the case and found the allegations false and final form was filed on 31.01.2012 finding the case to be false. The final form was accepted by the Magistrate and thereafter, he proceeded on the basis of the protest petition which was treated as complaint and thereafter, examining the complainant, three inquiry witnesses took cognizance under Sections 341, 323, 504/34 of the Indian Penal Code.

The cognizance order has been challenged by the petitioners mainly on the ground of *malafide* prosecution and



delay.

It has been submitted by the learned counsel for the petitioners that from the reading of the protest petition, it is clear that the complainant had some dispute with the petitioners during his service and for the same, he initially filed an F.I.R. which was found false, and thereafter, he filed a protest application and the cognizance was taken on the basis of his protest petition. Learned counsel has further argued that the F.I.R. was filed after a long delay and there was no plausible explanation for the delay in filing the F.I.R. and the protest petition was also filed in the year 2010.

Learned APP has opposed the quashing application and has submitted that there is no illegality in the cognizance order and the quashing petition is fit to be dismissed.

Considering the submissions of the parties, it is clear from the complaint itself that the entire dispute arises because the complainant was an employee of Scout and Guide and as per his own statement in the complaint. There was some proceeding against the complainant in which he was subsequently successful so the fact that the present prosecution is *malafide* one cannot be ruled out.

Considering the law laid down by the Supreme



Court in the case of *State of Haryana Vs. Bhajan Lal, 1992*
Supp (1) SCC 335, this application is allowed.

The cognizance order dated 31.05.2013 in Tr. No.
2676 of 2014 (arising out of Complaint Case No.1532 (c)/2012
with regard to petitioner no. 1 and 3 is hereby quashed.

(Sandeep Kumar, J)

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