

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.18126 of 2012

1. RAJESH SHARMA Sibani Sharma Resident Of Village- Malti, P.S. Rajoun, District- Banka
2. Subhash Sharma Sibani Sharma Resident Of Village- Malti, P.S. Rajoun, District- Banka
3. Amjit Sharma Sibani Sharma Resident Of Village- Malti, P.S. Rajoun, District- Banka
4. Sibani Sharma Late Genu Sharma Resident Of Village- Malti, P.S. Rajoun, District- Banka
5. Sulekha Devi D/O Sibani Sharma Resident Of Village- Malti, P.S. Rajoun, District- Banka
6. Chanda Devi W/O Subhash Sharma Resident Of Village- Malti, P.S. Rajoun, District- Banka

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Bijendra Mandal Late Pairu Mandal Resident Of Village- Malti, P.S. Rajoun, District- Banka

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Mrityunjay Prasad Singh, Adv.
Mr.Rashmi Kumari, Adv.

For the Opposite Party/s : Mr.Abhay Kumar 1, APP

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

9 23-03-2023 Heard learned counsel for the petitioners and the State although the name of Mr. Ajay Mukherjee appears on behalf of the Opposite Party No. 2, on call is not present.

This is an application for quashing of the order dated 28.2.2012 passed by the learned C.J.M., Banka in Complaint Case No. 1410/2011 by which he was pleased to



take cognizance for the offences under Sections 323, 379 and 504 of the I.P.C.

Learned counsel for the petitioners has taken this Court to the complaint by which it has been alleged that the accused persons came in the midnight and after tying them, took away 30 bags of cement, two quintals of iron rod as also other materials including the golden chain of the daughter-in-law, the silver materials and further demolished their house. Accordingly, the complaint.

Learned counsel for the petitioners submit that the allegation in the complaint does not show that any vehicle was used for carrying 30 bags of cement and/or two quintals of iron rod and in that background, the entire complaint seems to be false and fabricated in the backdrop of the fact that they are neighbour and there was dispute with regard to 'rasta'.

He further submits that the mother of the petitioner Nos. 1 to 3 who is wife of petitioner No. 4, namely Basanti Devi earlier lodged an FIR under Sections 436 and 34 of the IPC alleging that the accused persons including the complainant of this case put their house on fire and had seen them escaping from the place. This led to lodging of Rajoun Thana P.S. Case No. 124 of 2011 on 21.7.2011.



He as such submits that the present complaint is nothing but an abuse of process of the court.

In this case, the matter was taken up on 14.8.2012 and notices were issued to the Opposite Party No. 2 by a bench of this Court.

Despite filing of 'vakalatnama', there is no appearance from the Opposite Party No. 2 nor any counter affidavit has been filed.

Subsequently, on 7.2.2013, the matter was admitted by another bench of this Court while staying the further proceeding in Complaint Case No. 1410 of 2011 pending in the court of learned Judicial Magistrate, 1st Class, Banka.

Although, subsequently, the matter was dismissed for non-prosecution, the same now stands restored.

Taking into account the averment that has come in the petition, the same being uncontroverted, there was a case by the petitioners side and the allegations in the complaint does not seem plausible, this Court is in full agreement with the submissions put forward by the learned counsel for the petitioners and in that backdrop, the present petition is allowed.

The order dated 28.2.2012 passed by the learned



C.J.M., Banka in Complaint Case No. 1410/2011 stands
quashed.

(Rajiv Roy, J)

Ajay Singh/-

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