

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.49538 of 2022

Arising Out of PS. Case No.-384 Year-2021 Thana- BRAHMPUR District- Buxar

1. BHARAT YADAV @ BHARATH YADAV Son of Shivmuni Yadav Resident of Village - Baraka Dhakaich, Lewar, Police Station - Krishna Brahm (Brahmpur), District - Buxar (Bihar).
2. Dharmendra Yadav Son of Shivmuni Yadav Resident of Village - Baraka Dhakaich, Lewar, Police Station - Krishna Brahm (Brahmpur), District - Buxar (Bihar).
3. Devendra Yadav Son of Shivmuni Yadav Resident of Village - Baraka Dhakaich, Lewar, Police Station - Krishna Brahm (Brahmpur), District - Buxar (Bihar).
4. Sanjuk Yadav Son of Bharat Yadav Resident of Village - Baraka Dhakaich, Lewar, Police Station - Krishna Brahm (Brahmpur), District - Buxar (Bihar).
5. Raju Yadav Son of Bharat Yadav Resident of Village - Baraka Dhakaich, Lewar, Police Station - Krishna Brahm (Brahmpur), District - Buxar (Bihar).

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioners	:	Mr. Arun Kumar Singh, Advocate
For the State	:	Mr. Zainul Abedin, APP
For the Informant	:	Mr. Ramakant Yadav, Advocate

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

4 06-03-2024 Heard learned counsel for the petitioner, learned
A.P.P. for the State and learned counsel for the informant.

2. This application has been filed under Section 482 of the Code of Criminal Procedure on behalf of petitioners for quashing the order dated 07.05.2022 passed by the learned Additional District and Sessions Judge-VI-cum-Special Judge, POCSO Act, Buxar, in POCSO Case No. 30 of 2022 arising out of Brahmpur P.S. Case No. 384 of 2021. By the said order, the



learned Judge took cognizance of offences punishable under Sections 323, 448, 504 and 354A of the Indian Penal Code and Section 8 of the POCSO Act against all these petitioners.

3. The prosecution story in brief is that on the alleged date and time of occurrence, while the informant was going to her fields, Sanjuk Yadav (Petitioner No. 4) tried to molest her. It is further alleged that when the mother of the informant went to make complain about the same, all these petitioners chased her to her house and thereafter entered into their house and assaulted the informant and her mother, on account of which they sustained multiple injuries.

4. Learned counsel for the petitioners submits that due to previous civil dispute between the parties for which Title Sit No. 77 of 2019 is going on, this false and concocted case has been lodged against the petitioners. It is next submitted that the police after investigation submitted final form on 31.08.2021, showing the prosecution case as untrue. However, even after submission of final form in favour of the petitioners, differing with the same, the learned Additional District and Sessions Judge-VI-cum-Special Judge, POCSO Act, Buxar, vide order date 07.05.2022, took cognizance against these petitioners for the offences punishable under Sections 323, 448, 504 and 354A



of the Indian Penal Code and Section 8 of the POCSO Act. It is further submitted that petitioners are innocent and have committed no offence and have falsely been implicated in this case due to previous dispute, in order to pressurize them to succumb to their dictates and as such, the impugned order of cognizance is bad in law and is fit to be quashed.

5. On the other hand, learned counsel appearing on behalf of the informant and learned A.P.P. for the State have vehemently opposed the submissions made on behalf of the petitioners and supported the order of cognizance submitting that from bare perusal of the F.I.R. as well as from the impugned order it is evident that there was sufficient material available on record to take cognizance against these petitioners and at this stage, it cannot be said that no *prima facie* case is made out against the petitioners. It is further submitted that the grounds which have been raised by the petitioners in the instant application for quashing of the order of cognizance are in the realm of probable defence, which can only be looked at the stage of trial after perusing evidences on behalf of the parties. Therefore, no interference is required by this Hon'ble Court at this stage.

6. It is settled law that at the stage of taking



cognizance of the offence, the concerned court is only required to see whether *prima facie* there are reasons for issuing the process and whether the ingredients of the offence are there on record. The correctness of the order of cognizance of the offence has been taken by the court unless it is perverse or based on no material, should be sparingly interfered. In this connection, reliance can be placed on judgment of the Hon'ble Apex Court passed in the case of ***S.K. Sinha, Chief Enforcement Officer versus Videocon International Ltd. & Ors*** reported in **(2008) 2 SCC 492**.

7. The Hon'ble Apex Court in the case of ***Jagdish Ram versus State of Rajasthan and Another*** reported in **(2004) 4 SCC 432** has held that investigation is the job of the police and taking cognizance is within the jurisdiction of the magistrate. Findings arrived at by the police during investigation is not binding upon the learned court below. If on the record this much of evidence is available that *prima facie* cognizance can be taken then the magistrate should take cognizance. The magistrate should be convinced that there is enough basis for further proceedings rather than sufficient basis for proving the guilt.

8. In view of the aforesaid facts and circumstances of



the case, this court does not find any illegality in the order
impugned.

9. Accordingly, this quashing application is dismissed.

(Prabhat Kumar Singh, J)

shashank/-

U		T	
---	--	---	--

