

(2010) 03 PAT CK 0096

In the Patna High Court

Surendra Singh @ Surendra Prasad Singh and Others

APPELLANT

Vs

The State of Bihar and Most. Satbhawan Devi

RESPONDENT

Date of Decision : 12-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 482
Penal Code, 1860 (IPC) — Section 323, 34, 347, 380, 447

Citation : (2010) 03 PAT CK 0096

Hon'ble Judges : Shiva Kirti Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Shiva Kirti Singh, J.—Heard learned Counsel for the petitioners and learned Counsel for the State. Inspite of notice nobody appears on behalf of O.P. No. 2, informant/complainant.

2. The petitioners have challenged the order of cognizance dated 27-4-1998 passed by learned Judicial Magistrate, 1st Class, Nalanda whereby he has taken cognizance under Sections 447, 323, 380 and 347/34 of the Indian Penal Code in Silao PS case No. 231/1997 (G.R. No. 1368/1997).

3. It has been submitted on behalf of the petitioners that learned Magistrate should have considered the materials on record more carefully and in further detail because police had submitted final form holding the allegations to be false. It has further been submitted that there was a case lodged by the petitioners few days earlier and hence, the present case has been lodged by the mother of one of the accused only to wreak vengeance and to put pressure upon the petitioners.

4. The parties are co-villagers and it appears that the earlier case lodged by the mother of one of the petitioners is at the stage of trial. A perusal of the order under challenge shows that learned Magistrate has referred to various paragraphs of the case diary as well as to statement of two witnesses recorded u/s 164 of the Code of Criminal Procedure and after taking note of the relevant law

he had decided to take cognizance.

5. At this stage, it will be very difficult and may create undue prejudice to the defence of the other side if it is held that the allegations are false and malafide. It is difficult to hold that learned Magistrate has taken cognizance without due application of mind to the materials available on record.

6. In view of such facts and situation, this Court finds no good ground to interfere in the matter in exercise of power u/s 482 of the Code of Criminal Procedure. This application is, therefore, dismissed.

7. This order shall not prejudice the case of petitioners or their defence at appropriate stage. Learned court below is directed to expedite the proceedings and conclude the same in accordance with law at an early date.