

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. M.P. No. 2348 of 2014

1. Chotu Mahto
2. Gunda Mahto
3. Kartik Mahto
4. Ganesh Mahto
5. Mili Mahto

... Petitioner(s).

-Versus-

1. The State of Jharkhand
2. Beloon Mahato.

... Opp. Party(s).

CORAM : HON'BLE MR. JUSTICE ANANDA SEN.
Through: Video Conferencing

For the Petitioner(s) : Mr. Harendra Kr. Mahato, Advocate.
For the State : A.P.P.
For Opp. Party No. 2 : Mr. Bhola Nath Rajak, Advocate.

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10/25.06.2020: The lawyers have no objection with regard to the proceeding, which has been held through video conferencing today at 10:30 A.M. They have no complaint in respect of the audio and video clarity and quality.

2 Heard the counsel for the parties.

3 By way of filing this petition, the petitioners have prayed for quashing the FIR in connection with Chowka P.S. Case No. 52/2014 (G.R. No. 603 of 2014) registered under Sections 3/ 4 of the Prevention of Witch (Daain) Practices Act, 1999, pending in the court of learned Judicial Magistrate, Saraikella.

4 Learned counsel for the petitioner submits that on the same allegation, earlier a petition dated 25.7.2014 was filed by the husband of opposite party No. 2 (Annexure-2 of this petition) and on the said petition, a proceeding under Section 107 Cr.P.C was initiated against the petitioners. He further submits that there are two different reports of the same allegation, the subsequent is the instant FIR, which needs to be quashed. In support of his submission, he heavily relied upon Section 300 Cr.P.C. He, in support of his submission, has also referred to and relied upon a judgment/order passed by this Court in the case of **Tula Devi Vs. The State of Jharkhand** reported in **(2006) 3 JCR 222**.

5 I have gone through the record and the petition dated 25.7.2014, which is kept at Annexure-2. In this case, the petitioners have challenged the FIR. The petitioners have not challenged the cognizance order. While quashing the FIR, the court has to see whether any offence is made out or not against the accused. If a cognizable offence is made out, the FIR cannot be quashed.

6 I have perused the petition dated 25.7.2014 (Annexure-2), filed by the husband of opposite party No. 2, wherein it has been mentioned that on

20.2.2014 the accused persons, whose names have been figured in the said petition, were branding his wife namely, Baloon Mahato, as Witch. On the basis of the aforesaid petition, a proceeding under Section 107 Cr.P.C was drawn. Baloon Mahato i.e. opposite party No. 2 also filed an application before the police making the same allegation and upon the said application, instant FIR being Chowka P.S. Case No. 52 of 2014 has been registered. The petitioners have prayed for quashing the said FIR.

7 This Court feels that there is no application of Section 300 Cr.P.C in this case. Section 300 Cr.P.C provides that a person once convicted or acquitted cannot to be tried for same offence. In this case, according to the counsel for the petitioners, there are two proceedings arising out of the same and similar facts i.e. a proceeding under Section 107 Cr.P.C and another is the instant FIR. Proceeding under Section 107 Cr.P.C cannot be said to be a trial by a competent court having jurisdiction. Thus Section 300 Cr.P.C has got no application in this case. In this case, the FIR (Annexure-1 to this petition) makes out offence against the petitioners. It has been alleged in the FIR that the petitioners were branding opposite party No. 2 as Witch. Thus ingredient of Section 4 of the Prevention of Witch (Daain) Practices Act, 1999, is attracted in this case.

8 In view of the aforesaid facts, I am not inclined to entertain this petition. Accordingly, this petition is **dismissed**.