

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 18666 of 2013

Arising Out of PS.Case No. -99 Year- 2011 Thana -NAUBATPUR District- PATNA

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1. Chakreshwar Kumar Sharma @ Baban Sharma Son of Late Brij Bihari Sharma Resident of Village- Chiraura, P.S.- Naubathpur, District- Patna.
 2. Omkar Sharma @ Onkar Sharma Son of Late Brij Bihari Sharma Resident of Village- Chiraura, P.S.- Naubathpur, District- Patna.
 3. Satya Prakash Sharma Son of Late Brij Bihari Sharma Resident of Village- Chiraura, P.S.- Naubathpur, District- Patna.
 4. Sudhanshu Shekhar S/O Chakreshwar Sharma Resident of Village- Chiraura, P.S.- Naubathpur, District- Patna.
 5. Kalshwar Sharma @ Kaleshwar Singh S/O Late Brahma Singh Resident of Village- Amhara, P.S.- Bihata, District- Patna.
 6. Smt. Shanti Devi W/O Shri Kauleshwar Sharma @ Kauleshwar Singh Resident of Village- Amhara, P.S.- Bihata, District- Patna.
 7. Munna Singh S/O Kauleshwar Sharma @ Kauleshwar Singh Resident of Village- Amhara, P.S.- Bihata, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Umesh Kumar S/o Late Kemeshwar Singh of village- Ibrahimpur, P.S. Naubatpur, District- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL ORDER

4 02-07-2015

Heard learned counsel for the petitioners and learned A.P.P. for the State.

Despite notice having been issued to Opposite Party No. 2 (Complainant) and learned counsel entering appearance on his behalf, nobody appears when the case is taken up. The same was the position on 25.06.2015 also when by way of last indulgence the case has been adjourned so as to give one more opportunity to the opposite party no. 2

to be represented. However, even today nobody appears on behalf of opposite party no. 2.

The present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of the order dated 23.07.2012 passed by the learned S.D.J.M., Danapur in Naubatpur P.S. Case No. 99 of 2011/G.R. No. 1179 of 2011 by which cognizance has been taken against the petitioners along with four others under Sections 420/120B/467/468/471 of the Indian Penal Code.

Learned counsel for the petitioners submits that the parties are agnates and initially a complaint case was filed which was referred to the police and the police after investigation had submitted final form coming to the conclusion that the matter related to dispute of property. However, differing from the same the Court concerned has taken cognizance. Learned counsel submits that the allegation in the complaint/F.I.R. is that the petitioners have sold the property belonging to the share of the complainant. Learned counsel submits that it is not in dispute that both have common ancestor and the entire lands are ancestral land with regard to which Title Suit No. 8 of 1995 is pending. Thus, the allegation is frivolous and premature as the share of co-sharers has not yet been determined by the Court and further the matter with regard to sale of property being purely of a civil nature, for which a Civil Court of competent

jurisdiction has to be moved and most glaringly the opposite party no. 2 had twice filed petition seeking injunction in the suit which was refused. Thus, it is submitted that the present criminal case is clearly an abuse of the process of the Court.

Learned A.P.P. also supports the argument of learned counsel for the petitioners.

In view of the fact that nobody is present to represent opposite party no. 2 in the case, the Court can only presume that he does not want to contest the matter.

In view of the aforesaid and also finding substance in the submissions made by learned counsel for the petitioners, the application stands allowed. The order dated 23.07.2012 passed by the learned S.D.J.M., Danapur in Naubatpur P.S. Case No. 99 of 2011/G.R. No. 1179 of 2011 arising out of Complaint Case No. 192 (C) of 2011 stands quashed.

(Ahsanuddin Amanullah, J.)

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