

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.10217 of 2010

Arising Out of Complaint Case No. 466 (C) Year- 2007 District- PATNA

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1. Dhananjay Kumar
 2. Mritunjay Kumar

Both sons of Sri Sidhnath Prasad, residents of Mohalla South Chandmari Road, Budha Nagar Road No. 3, P.O, KIankarbag, P.S. Kankarbagh, Distt. Patna.

3. Vikash Kumar, son of Dukhi Sah, resident of village & P.O. Jaijor via Andar, P.S. Andar, Distt. Siwan.

.... Petitioner/s

Versus

1. The State of Bihar
2. Sanjay Kumar, son of Sri Sidhnath Prasad, resident of mohalla South Chandmari Road, Budha Nagar Road No. 3, P.O. Kankarbag, P.S. Kankarbag, Distt. Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. M.N. Prabhat, Sr. Adv.

For the State : Mr. Ajay Kumar-2, A.P.P.

For the Opposite Party No. 2 : Manoj Kumar Sinha, Adv.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 18-09-2015

Heard learned counsel for the Petitioners and the State.

The Petitioners seek quashing of the order dated 8.12.2009 passed by the Sessions Judge, Patna, in Criminal Revision No. 546 of 2009 by which he has affirmed the order dated 5.6.2009 passed by the Judicial Magistrate, 1st Class, Patna, in Complaint Case No. 466(C) of 2007.

The case of the Complainant is that he and the Petitioners No. 1 and 2 were own brothers whereas the Petitioner No. 3 was his servant. They used to reside in the same house but the Petitioner Nos.



1 and 2 are in bad Company, and they often used to threaten their parents to evict the Complainant from the house, on account of which, a Title Suit No. 49 of 2005 was instituted between the Parties for partition of the property. However, the accused Nos. 1 and 2 got instituted a Criminal complaint through their father against the Complainant, in which, subsequently, he was acquitted. On the night of the occurrence, the accused persons broke open the lock of his door and when an alarm was raised, they fled away. On another night, the accused persons entered into the house armed with firearms and lathi and took away the articles from the house as also his personal possession.

It has been submitted that it is unfortunate that the brothers had family feud over such a petty matter, even while, the suit was pending between them. If, at all, there was a dispute with regard to the property, the best course would have been to fight it out in the Civil Court. Evidently, in the background of active dispute of property, the present Complainant is mala fide only with a view to pull the accused persons before the Criminal Court, which is an easy way of settling a dispute.

On the other hand, the counsel for the Complainant submits that he had been unfairly dealt with the accused persons and they had him evicted even while the Partition Suit was pending and,

hence, this Court should not interfere in the matter. Also since this is a second Revision in the garb of an application under Section 482 Cr. P.C., no further indulgence be given to the Opposite Party No. 2.

Having considered the background facts of the dispute as also the merits of the Complaint, I have no manner of doubt that the allegations are frivolous and unreliable and, hence, the application is allowed and the Proceeding including the order dated 8.12.2009 passed by the Sessions Judge, Patna, in Criminal Revision No. 546 of 2009 and the order dated 5.6.2009 passed by the Judicial Magistrate, 1st Class, Patna, in Complaint Case No. 466(C) of 2007, are hereby set aside without any prejudice to either parties.

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(Anjana Prakash, J)

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