

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.26330 of 2012

Arising Out of COMPLAINT CASE NO. -943 Year- 2011 District- GOPALGANJ

- =====
1. Rafique Khan S/O Rajbullah Khan
 2. Arif Khan S/O Rafique Khan
 3. Tunna Khan S/O Nasrullah Khan
 4. Kalamul Bibi W/O Rafique Khan

All are residents of Bairia Dhodhan, Police Station- Uchkagaon, District- Gopalganj

.... Petitioners

Versus

1. The State of Bihar
2. Masaul Mian S/O Late Azim Mian, Resident of Village- Bairia Dhodhan, Police Station- Uchkagaon, District- Gopalganj

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 07-04-2015

The petitioner seeks quashing of the order of cognizance dated 19.12.2011 passed by the Judicial Magistrate, Gopalganj in Complaint Case No.943 of 2011, Tr. No. 318 of 2012 under Sections 323, 379, 427 and 504 of the Indian Penal Code.

The case of the complainant is that he was the absolute owner of certain piece of land having derived the same from his father but the accused persons in order to assert their rights came upon the same and assaulted him with fists and slaps as also committed theft of his personal property.

The submission of the petitioners is that fact of the matter is that the petitioners were the absolute owners of the said land and only in order to create an interest in the same, the present

complaint has been filed. In fact the complainant has filed another complaint bearing Complaint Case No. 1080 of 2012 regarding same land dispute. Some other proceedings have also been initiated. In this background the present complaint appears to be an abuse of the process of the Court.

It has been submitted on behalf of the complainant that documents show that it was the complainant, who was the absolute owner of the land in question, and the accused persons are trying to capture his land even though he was in exclusive possession and hence, the petitioners should be prosecuted.

Having regard to the background facts, in my opinion at best a civil dispute is made out and the allegations of assault and theft appear embellishments.

Hence, the proceeding including the order of cognizance dated 19.12.2011 passed by the Judicial Magistrate, Gopalganj in Complaint Case No.943 of 2011, Tr. No. 318 of 2012 under Sections 323, 379, 427 and 504 of the Indian Penal Code is, hereby, set aside.

The Application stands allowed.

However, the quashment of the proceeding shall have no bearing on any other claim.

(Anjana Prakash, J.)

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