

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.38794 of 2012

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1. Birendra Prasad S/O Late Baidyanath Prasad,
2. Jhunna Prasad S/O Late Surendra Prasad,
3. Rameshwar Prasad S/O Late Awadh Bihari Lal,
4. Mankeshwar Prasad S/O Late Awadh Bihari Lal,
5. Chandeshwar Prasad S/O Late Awadh Bihari Lal,
6. Munna Prasad S/O Late Surendra Prasad,
7. Surendra Prasad S/O Late Ramakant Prasad
All residents Of Village Nawada, P.S. Barauli, District Gopalganj.

.... Petitioner/s

Versus

1. The State Of Bihar.
2. Mostt. Gangajali Devi W/O Late Lalmuni Manjhi Resident Of Village
Nawada, P.S. Barauli, District Gopalganj.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Naresh Chandra Verma

For the Opposite Party/s : Mr. Bharat Bhushan (App)

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

4 01-04-2015

Heard the learned counsel, Mr. Naresh Chandra

Verma for the petitioners and the learned A.P.P. for the State of
Bihar. In spite of notice to the opposite party No.2, nobody
appeared.

This application under Section 482 Cr.P.C. has been
filed by the petitioners for quashing the order dated 03.04.2012
passed by the learned Judicial Magistrate, 1st class, Gopalganj in
Trial No.2609 of 2012 arising out of Hajipur Schedule Castes &
Scheduled Tribes P.S. Case No.413 of 2010 whereby the court
below has taken cognizance of offence under Sections 147, 323,

447, 504 and 149 I.P.C.

It appears that earlier F.I.R. was lodged by the O.P. No.2 on 31.07.2010 which was registered as Hajipur Scheduled Castes & Scheduled Tribes P.S. Case No.413 of 2010 under Sections 147, 149, 323, 447 I.P.C. and 3(i)(x) of Scheduled Castes & Scheduled Tribes Act. After investigation, the I.O. filed final form to the effect that the occurrence alleged by the informant is false. The I.O. also found that the petitioners are residents of different places i.e. some of them reside in Bihar, some in Delhi and some in Jharkhand. After submission of final form, a protest petition was filed by the O.P. No.2 on 09.08.2010 wherein same allegation has been made by the informant. The protest petition has been annexed as Annexure 1 to this criminal miscellaneous application. At paragraph 3 of the protest petition, it is stated that on 18.07.2010, when the informant was sitting at her door the accused petitioners came with lathi, danda, kudal etc. and abuses her in the name of her caste and assaulted her with legs, fists, danda etc.. The motive for the occurrence is alleged that with a view to grab the land of the complainant-O.P. No.2 comprised within khata No.162 plot No.482. Opposite party is being harassed by the accused petitioners. From perusal of the police report i.e. final form submitted, it appears that title suit No.212 of



1988 was filed by the petitioners against the husband of the O.P. No.2 and other family members for declaration of title and recovery of possession with respect to the land comprised within plot No.482 of khata No.162 and the said title suit has been decreed. For recovery of possession, the petitioner has filed execution case being Execution Case No.4 of 2009.

The learned counsel, Mr. Verma appearing on behalf of the petitioners submitted that the petitioners do not reside in their native village and in fact, with a view to harass the petitioner this improbable case has been filed by the O.P. No.2 and the allegation regarding occurrence is not probable. Since the petitioners have filed the execution case for recovery of possession to pressurize the petitioners, the O.P. No.2 has only levelled omnibus allegation that the petitioners came and assaulted her. The learned counsel submitted that if the prosecution is allowed to continue against the petitioners it will amount to abuse of the process of the Court and the process of the Court is being used as weapon by the O.P. No.2 against the petitioners, therefore, the order taking cognizance is liable to be quashed.

On the other hand, the learned A.P.P. submitted that the witnesses examined under Section 202 Cr.P.C. on the basis of the protest petition have supported the case of the complainant

and, therefore, the quashing application is liable to be dismissed.

As stated above, in spite of notice, nobody appeared on behalf of the opposite parties.

In view of the above facts, it is now clear that title suit No.212 of 1988 was filed by the petitioners against the opposite party's family for declaration of title and recovery of possession of the land comprised within plot No.482 of khata No.162. It is admitted fact that the said suit has been decreed and for recovery of possession, the petitioners have filed execution case for executing the decree. From perusal of the protest petition as well as the initial F.I.R., it appears that the only allegation made by the opposite party No.2 is to the extent that while she was sitting at her door the accused persons came with lathi, danda, kudal etc. and assaulted her and abused her taking her caste name. It is admitted fact that O.P. No.2 was never examined by Doctor. No medical report was produced. Now, therefore, so far the allegation is concerned, it is in substance that without any rhyme and reason, the petitioners i.e. petitioner No.1 who is practicing Advocate of the Patna High Court whereas petitioner No.7, Surendra Prasad is Doctor practicing in Delhi with other petitioners assaulted the O.P. No.2 for obtaining delivery of possession of the property of plot No.482. The question is can this

allegation only be relied upon by a Court of law?

It is well settled principles of law that the Court should apply the test as to whether the uncontroverted allegation as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegation are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender. The power of the Court cannot be permitted to be used for an oblique or ultimate ulterior purpose. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the Subordinate Courts even in such cases the High Court should be loath to interfere at the threshold to throttle the prosecution in exercise of its inherent powers. In the present case, as stated above, from the allegation made in the complaint application i.e. protest petition and also the F.I.R., it appears that the allegations are patently absurd and inherently improbable and no prudent man can rely upon the allegation to the effect that a practicing Advocate of the High

Court and a practicing Doctor in Delhi with intention to grab the property assaulted the O.P. No.2. In my opinion, it appears that the O.P. No.2 is adamant to prosecute the petitioners with ulterior purpose because of the fact that she already lost the title suit and execution case has been filed by the petitioners for recovery of possession of the same very land for which the present occurrence is said to have taken place. In my opinion, therefore, if the criminal proceeding is allowed to stand against the petitioners it will be nothing but abuse of the process of the Court.

Therefore, the order taking cognizance which is impugned in this criminal miscellaneous is hereby quashed. Thus, this criminal miscellaneous application stands allowed.

(Mungeshwar Sahoo, J)

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