

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.37827 of 2011

Arising Out of PS.Case No. -281 Year- 2007 Thana -null District- SAMASTIPUR

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1. Md. Mustafa
 2. Md. Ajj
 3. Md. Adam
 4. Md. Safique
 5. Md. Murtaza all are sons of Md. Ismile
 6. Md. Kayum S/O Md. Safique
 7. Md. Aslam
 8. Md. Samim @ Bechan both sons of Late Md. Abbash, Resident Of Village- Haripur, Tole Murdauli, P.S.- Singia, District- Samastipur

.... Petitioner/s

Versus

1. The State Of Bihar
2. Md. Usman S/O Md. Manir Matofa Resident Of Village- Haripur, Tole Murdauli, P.S.- Singia, District- Samastipur

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kr. Mishra, Advocate

For the Opposite Party/s : Mr. Ajay Kr. Jha, APP

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 16-02-2015

The Petitioners seek quashing of the order dated 25.8.2011 passed by the Additional District & Sessions Judge, Rosera, Samastipur in Criminal Revision No.599 of 2010, by which he has affirmed the order of non-discharge dated 30.7.2010 passed by the Sub Divisional Judicial Magistrate, Rosera in C.R. No.281 of 2007 (Trial No.1353 of 2010/1220 of 2011).

The case of the Complainant is that the accused persons, who were his close agnates, took away 15 quintals of wheat packed in 18 gunny bags and when he protested they fired at him. His further complaint was that the accused did such an act even after a Title Suit

had been filed by him with regard to possession of the said land.

It has been submitted on behalf of the Petitioners that fact of the matter is that after the Complaint was filed no witness turned up for examination before charge, at which the application was filed for discharge but the same was dismissed. The further submission is that as is evident there is bonafide claim over the said land and hence no offence under Section 379 I.P.C. would be made out in such circumstances.

Notices had been issued to the Opposite Party No.2 but none appears on his behalf.

Having considered the aforesaid facts and those stated in the Complaint Petition with regard to the title suit pending between the parties, who are agnates, the application is allowed and the proceedings including the order dated 25.8.2011 passed by the Additional District & Sessions Judge, Rosera, Samastipur in Criminal Revision No.599 of 2010 and the dated 30.7.2010 passed by the Sub Divisional Judicial Magistrate, Rosera in C.R. No.281 of 2007 (Trial No.1353 of 2010/1220 of 2011) are hereby set aside.

(Anjana Prakash, J)

Narendra/-

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