

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.47122 of 2012

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Suresh Prasad Sah @ Suresh Prasad Baranwal son of Late Sant Lal Sah,
resident of village Kumhari P.S.Kadwa District Katihar.

.... Petitioner/s

Versus

1.The State of Bihar.

2. Badri Mandal s/o Late Mathru Mandal, R/o village Kumhari P.S.Kadwa
district Katihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Yogesh Chadra Verma, Sr. Adv.
Mr. Aman Prakash, Adv.

For the Opposite Party/s : Mr. Sharda Kumari(App)
For the O.P.No.2 Mr. Sanjeev Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

4 14-05-2015 Heard counsel for the petitioner, for the State and for
the O.P.No.2.

In this petition, petitioner is challenging the order of
cognizance dated 5th January 2012 passed in Kadwa P.S.Case
No.07 of 2010 by which the court below has taken cognizance u/s
147, 341, 323 IPC.

An FIR has been lodged with respect to Khata No.
13(old), Chak khata no.07 (new) plot no. 13(old) (07 (new) total
area 2.10 acres claiming Bataidari u/s 48E of the B.T.Act.

The original land-holder sold the disputed land to
others. Allegation has been made that he has cultivated the land
and grown the maize crops. Accused persons armed with lethal
weapons along with a tractor forcibly entered into the field of

maize crops.

Allegation has been made that accused persons forcibly tied hands and assaulted the informant with fists and legs and destroyed the crop worth rupees one lac.

Counsel for the petitioner submitted that there is no dispute that the petitioner is the owner of the property which has been accepted by the O.P.No.2, he has claimed to be Bataidar and grown maize crops.

From the order dated 20th April 2011 passed in Bataidari Case No.33 of 2009-10 it appears that the Additional Collector Land Reforms in Bataidari case arrived to a finding that the claim of the informant being a tenant and cultivating the same is completely wrong and decided the case against the informant by a positive finding of not being Bataidar of the land. In such a situation, the foundational fact for prosecuting the petitioner falls on the ground.

Counsel for the O.P.No.2 (Bataidar) has not disputed the fact about the finding recorded by the LRDC holding that the claim of Bataidar is false.

Having considered the rival contention of the parties the basis of growing maize crops is dependant on the outcome of the proceeding u/s 48E of the B.T.Act where claim was made of being Bataidar of cultivating the land. Specific finding on Bataidar

is against the O.P.No.2. In such view of the matter, this Court feels that continuation of the proceeding is abuse of process of the court. Accordingly this petition is allowed and the impugned order is hereby quashed.

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(Shivaji Pandey, J)

