

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.48196 of 2012

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Om Prakash Aman

.... Petitioner/s

Versus

State of Bihar & Anr

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr. Matloob Rab (App)

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

- 4 16-07-2015 **1.** Heard the learned counsel, Mr. Saket Tiwary, for the petitioner and the learned counsel, Mr. Vijay Ranjan, for the Opposite party No.2.
- 2.** This Criminal Misc. application under Section 482 Cr.P.C. has been filed by the petitioner, Om Prakash Aman, for quashing the order dated 27.06.2012 passed by the learned Judicial Magistrate, Ist Class, Supaul in Complaint Case No.15 (C) of 2011 whereby the Court below has taken cognizance under Section 323, 447, 379 and 504 I.P.C.
- 3.** The learned counsel for the petitioner submitted that the only allegation against the petitioner and other accused person is that on the date of occurrence, this petitioner along with co-accused persons uprooted cauliflower from the land of the complainant. According to the learned counsel, the petitioner has



purchased the same land whereas the complainant also claimed to have purchased the same land and there is land dispute regarding ownership and possession over the same land and title suit No.240 of 2010 is pending, therefore, in fact unless the tile and possession is decided in the said title suit, no case is made under Section 379 I.P.C. Moreover, the learned counsel submitted that when the dispute raised by the complainant is of pure civil nature, it will be abuse of process of law, if the criminal proceeding is allowed to continue.

4. On the other hand, the learned counsel for the opposite party No.2 submitted that at this stage, the allegation made in the complaint is to be seen in its entirety and whether the allegation are true or not, cannot be decided under Section 482 Cr.P.C. On the basis of the material, i.e., the statements of the witnesses under Section 202 Cr.P.C. the Court has taken cognizance, therefore, in exercise of jurisdiction under Section 482 Cr.P.C., the order cannot be quashed.

5. Perused the order taking cognizance. It is admitted fact that title suit No.240 of 2010 is pending between the parties. The plaint of the title suit has been annexed as Annexure '4'. From perusal of the complaint application Annexure 1, it appears that

from paragraph 1 to paragraph 8, the statement made by the complainant is with respect to the title between the parties. The only allegation against the accused persons is made in paragraph 9 to the effect that all the accused persons came at the spot and uprooted the cauliflower. Except this, there is no other allegation made in the complaint case.

6. The Hon'ble Supreme Court in the case of *Md. Ibrahim Vs. State of Bihar (2009) 8 SCC 751* has held as follows :-

“this Court has time and again drawn attention to the growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused or out of enmity towards the accused, or to subject the accused to harassment. Criminal Courts should ensure that proceedings before it are not used for settling scores or to pressurize parties to settle civil disputes. But, at the same time, it should be noted that several dispute of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences even if they also amount to civil dispute.

7. In the present case as stated above from perusal of the

complaint application, the only allegation of uprooting of cauliflower. Admittedly, the petitioner and the complainant are purchaser of the same land. The title of both the parties are in dispute and likewise the possession of both the parties are also in dispute. In such circumstances, the allegation made in the complaint is nothing but to pressurize the other side to either give up possession or to declare the possession of the complainant. This dispute cannot be decided in complaint case. In my opinion, therefore this is a dispute of civil nature and the parties, if advised, may approach the civil Court in the concern suit for their grievance. If this criminal proceeding is allowed to continue, it will amount to abuse of the process of Court and will harass the petitioner and co-accused persons. Accordingly, I hereby quash the order impugned whereby the Court below has taken cognizance against the petitioner and other co-accused persons.

Sanjeev/-

(Mungeshwar Sahoo, J)

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