

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.16211 of 2013

Arising Out of PS.Case No. -577 Year- 2011 Thana -COMPLAINT CASE District- LAKHISARAI

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Ram Lakhan Singh & Ors.

.... 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. Dr. Kumar Uday Pratap(App)

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

- 3 09-07-2015 **1.** Heard the learned counsel, Mr. P.P.N. Sahi, for the petitioners. Heard the learned A.P.P. for the State of Bihar. In spite of service of notice, nobody appeared on behalf of the opposite party No.2.
- 2.** This Cr. Misc. application has been filed by the petitioners for quashing of the order dated 12th February, 2013 passed by the learned Judicial Magistrate, Ist Class, Lakhisarai in Complaint Case No.577 (C) of 2011 whereby the Court below has taken cognizance for the alleged offence under Section 323, 341 and 379 of the Indian Penal Code. It appears that the complainant opposite party No.2 filed the aforesaid complaint alleging that the petitioners forming unlawful assembly came to the land of the complainant and harvested the paddy crops grown by the

complainant.

3. The learned counsel for the petitioner submitted that in fact the dispute between the parties was with regard to the title of the land and title suit was filed for declaration of title by the opposite party No.2. The suit was dismissed by the trial Court. On appeal, the appellate Court also dismissed the appeal and then ultimately the Second Appeal before this Court filed by the opposite party No.2 was also dismissed at the admission stage itself under Order 41 Rule 11 C.P.C. The complainant has filed this case alleging the loot of paddy crops grown by the appellants whereas in fact he has lost up to the Supreme Court and, therefore, the petitioners are in fact the title holder and in possession of the subject matter of the suit. The dispute raised by the complainant opposite party No.2 is with regard to crop grown in the said land which was subject matter of the suit. According to the learned counsel, the dispute is of purely civil nature and since the title and possession has already been declared in favour of the petitioner, there is no question of theft of crop grown on the land arises. The Court below has wrongly taken cognizance in the Criminal Misc. application, the judgment of this Court passed in Second Appeal has been filed. Further, the two sale deeds executed by the father of the complainant opposite party No.2 has also been annexed and

according to the learned counsel, the two sale deeds were challenged by the opposite party No.2.

4. From perusal of the sale deeds, it appears that the lands which is said to be the place of occurrence was the subject matter of the sale deeds which was challenged by the opposite party No.2 in title suit which came up to the Second Appeal before this Court. Now, therefore, it is clear that it is a pure question of fact and the occurrence narrated by the complainant No.2 is nothing but to give pressure on the petitioners who are in fact in possession of the property and are the owner as has been held by the Court in the Second Appeal.

5. The Hon'ble Supreme Court in the case of *Md. Ibrahim Vs. State of Bihar (2009) 8 SCC 751* has held that **“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.

6. In the present case at our hand, admittedly the suit property was sold by the father of the complainant opposite party No.2. The suit filed by the complainant opposite party No.2 for declaration of his title and for setting aside the sale deeds have already been dismissed up to the second appellate Court. Now, therefore, the complaint case has been filed by a person who is not a title holder nor in possession of the property, therefore, this complaint case is nothing but a method of give pressure on the accused persons which show that because of enmity, it has been filed to harass the accused persons who have already got the decree against the complainant opposite party No.2. In such view of the matter, even if the allegation made by the complainant that the accused persons harvested the paddy from the land, it will not constitute any offence under Section 379 I.P.C. because harvesting paddy from own land cannot be termed as to commission of theft.

7. In view of the above facts and circumstances of the case, in my opinion, if the complaint proceeding is allowed to

continue, it will not only harass the accused persons who are the petitioners but also it will amount to abuse of process of Court. Accordingly, this Cr. Misc. application is allowed and the impugned order taking cognizance against the petitioner is hereby quashed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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