

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No. 28869 of 2014

Arising out of P.S. Case No. - 792 Year - 2012 Thana - WEST CHAMPARAN COMPLAINT
District - WESTCHAMPARAN (BETTIAH)

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1. Ramesh Sah
2. Jaiprakash Sah
3. Ramrit Sah
4. Suresh Sah, All Sons of Chhatar Sah
5. Chhatar Sah, Son of Late Harangi Sah, All Residents of Village -
Bairiya, P.S. - Bairiya, District - West Champaran

.... Petitioners

Versus

1. The State of Bihar
2. Badri Sah, Son of Late Harangi Sah, Resident of Village - Bairiya, P.S. -
Bairiya, District - West Champaran

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Umesh Chandra Verma, Advocate
For the Opposite Party/s : Mr. J. N. Thakur, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL ORDER

3 08-04-2016

Heard.

This is a petition for quashing the order dated 22.05.2014 passed by the learned Ad hoc Additional Sessions Judge, West Champaran, Bettiah, in Cr. Revision No. 233 of 2012 by which he has set aside the order of dismissal of the complaint dated 14.08.2012 under Section 203 of the Cr.P.C. in connection with Complaint Case No. 792-C of 2012 passed by learned Judicial Magistrate, Ist Class, Bettiah, West Champaran.

The prosecution case, as alleged, in the complaint petition, is that the complainant is in possession of land bearing Khata No. 134, Plot Nos. 1354 and 1353 having area of 4 Katha, 1



Dhur situated in village Bairiya and the petitioner no. 5 (Chhatar Sah) is the step-brother of the complainant and the other petitioners are the son of petitioner no. 5 for which a Title Suit No. 16 of 1988 is going on between the parties resulted the decree in favour of the complainant against which an appeal was filed by the petitioner no. 5 bearing Title Appeal No. 59 of 1993 which was also dismissed and on the pretext that petitioner no. 5 executed the sale deed in the name of his sons.

The learned Magistrate after inquiry and considering the evidence of the witnesses held that the decree has been passed in favour of the complainant against which an appeal was filed with regard to the land, in question, however, observed that the Court of the Magistrate has no jurisdiction regarding the possession and decree and hold that there is no prima facie case to issue summon. The said order was challenged before the Revisional Court and the same was ordered that since the title and possession has been decided by the Civil Court and appeal itself filed having been rejected and by the said judgment the possession and title has been declared in favour of the complainant and hence, a prima facie case is made out for the offence under Section 379 of the Indian Penal Code.

Hence, I do not find any merit to interfere with the order passed by the learned Sessions Judge as the order passed by the learned Magistrate against which Revision preferred appears to be passed without due application of mind as when the title has been declared in favour of the complainant and the complainant asserts his possession and is question for consideration who is in possession or had grown the crop and the allegation is that complainant is in possession, the petitioners harvested the crop dishonestly and hence, prima facie, case is made out and going into the question for consideration who were in possession of the land or had grown the crop and whether the accused persons have harvested the crop dishonestly or not is required to be decided by the trial Court and hence, the trial Court has jurisdiction to decide who is in possession and who had grown the crop and whether the petitioners harvested the crop dishonestly which is required to be decided by the trial Court.

Hence, I do not find any merit in the petition and the same is dismissed.

(Gopal Prasad, J)

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