

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No. 34379 of 2013

Arising out of P.S. Case No. - 944 Year - 2011 Thana - EAST CHAMPARAN COMPLAINT District - EASTCHAMPARAN (MOTIHARI)

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1. Ram Babu Singh, Son of Shri Late Tez Narayan Singh
 2. Raj Kishore Singh, Son of Late Hardavan Singh
 3. Braj Kishore Singh, Son of Late Hardavan Singh
 4. Ashok Kumar Singh, Son of Shri Ram Babu Singh
 5. Abhimanyu Kumar Singh, Son of Shri Ram Babu Singh
 6. Islam Miyan, Son of Late Bipat Miya
- Petitioners No. 1 to 6 are resident of village – Khartari Ahirauliya, P.S. – Chiraiya, District – East Champaran
7. Sanjay Singh, Son of Shri Kameshwar Narayan Singh
 8. Kameshwar Narayan Singh @ Kameshwar Singh, Son of Late Sunar Singh
- Petitioner No. 7 & 8 are residents of village – Bakhari, P.S. – Patahi, District – East Champaran
9. Md. Nashumuddin, Son of Late Jalaluddin
- Resident of Village Pachpakari Murli, P.S. Pachpakari, District East Champaran

.... Petitioners

Versus

1. The State of Bihar
2. Smt. Meena Devi, Wife of Surendra Kumar Singh, D/O Ramjatan Singh, Resident of Village Khartari Ahirauliya, P.S. Chiraiya, District East Champaran

.... Opposite Parties

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Appearance :

For the Petitioners : Mr.

For the Opposite Parties : Mr.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL ORDER

2 03-03-2016

Heard.

This is a petition for quashing the order dated 27.06.2013 passed by the learned District & Sessions Judge, East Champaran, Motihari in Cr. Revision No. 70 of 2013 by which the order dated 23.01.2013 taking cognizance of the offence under Sections 323, 417, 421, 352 and 504/34 of the Indian Penal Code by the learned Judicial Magistrate-1st Class, Sikrahana at Motihari

in Complaint Case No. 944 of 2011 has been confirmed.

The prosecution case is that the complainant purchased 1 Katha of land by registered sale deed bearing Khata No. 902, Plot No. 7648 on 15.04.2009 and since then came in peaceful possession after constructing the house. On 30.10.2011 accused nos. 1 to 6 armed with lathi, spade demolished the house and ousted the complainant with household articles. It is learnt that accused persons got forged sale deed accepted.

The trial Court on enquiry found that there is land dispute and both the parties are claiming the land and it is a case of civil dispute and dismissed the complaint under Section 203 of the Code of Criminal Procedure.

A revision has been preferred against the order dismissing the complaint under Section 203 of the Code of Criminal Procedure bearing Cr. Revision No. 131/41 of 2012 and the said revision was allowed by order dated 29.09.2012 with direction to held further enquiry and pass fresh order.

After the order passed in revision the learned Magistrate took cognizance for offence under Sections 323, 417, 421, 352 and 504/34 of the Indian Penal Code by order dated 23.01.2013.

Against the order taking cognizance the petitioner

preferred revision bearing Cr. Revision No. 70 of 2013 and the said revision was dismissed. It is ordered that on same material taking cognizance is nothing but a regular order in compliance of the direction of superior Court. Hence, taking cognizance on the basis of same material is in consonance with Section 398 of the Code of Criminal Procedure.

It is well settled that when a revisional Court in compliance of the provision contained in Section 398 of the Code of Criminal Procedure set aside the order passed under Section 203 of the Code of Criminal Procedure and remand the case for further inquiry then the Court below has no option but to take cognizance even on same material. An order of further inquiry does not make it obligatory to proceed again under Section 202 of the Code of Criminal Procedure but the Magistrate may issue process under Section 204 of the Code of Criminal Procedure without any inquiry at all. Hence, I do not find any merit in the petition. Accordingly, this petition is dismissed.

(Gopal Prasad, J)

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