

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.36051 of 2013**

Arising out of P. S. Case No. -4 Year- 2013 Thana -RAJNAGAR District- MADHUBANI

- =====
1. Mahendra Jha, S/o Late Raghunath Jha, Resident of Village- Bhatsimar, P.S- Rajnagar, District- Madhubani.
  2. Bhagwan Jee Jha, S/o Mahendra Jha, Resident of Village- Bhatsimar, P.S- Rajnagar, District- Madhubani.
  3. Satish Kumar Jha, S/o Bhagwan Jee Jha, Resident of Village- Bhatsimar, P.S- Rajnagar, District- Madhubani.
  4. Navin Kumar Jha, S/o Bhagwan Jee Jha, Resident of Village- Bhatsimar, P.S- Rajnagar, District- Madhubani.
  5. Pradip Kumar Jha, S/o Bhagwan Jee Jha, Resident of Village- Bhatsimar, P.S- Rajnagar, District- Madhubani.
  6. Manohar Jha @ Gajendra Jha, S/o Prabodh Jha, Resident of Village- Kaithahi, P.S- Rajnagar, District- Madhubani, At
  7. Sanjiv Mishra, S/o Ratneshwar Mishra, Village- Dhakjari, P.S- Arer, Distt- Madhubani.
  8. Rajesh Kumar Jha @ Rajesh Kumar, S/o Ramdeo Mahto, Resident of Village- Madhubani, P.S- Madhubani, District- Madhubani.

.... .... Petitioner/s

Versus

1. The State of Bihar
2. Ashok Kumar Jha, S/o Late Upendra Jha, resident of Village- Bhastimar, P.S- Rajnagar, District- Madhubani.

.... .... Opposite Party/s

**Appearance :**

For the Petitioner/s : Mr. Jitendra Narain Sinha -Advocate

For the Opposite Party/s : Mr. T. N. Thakur-(A.P.P.)

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**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**  
**ORAL ORDER**

07    21-02-2017                      Heard learned counsel for the petitioners, learned counsel for the opposite party no.2 and learned Additional Public Prosecutor.

Petitioners have been summoned to face trial vide order dated 09.07.2013 passed by the Chief Judicial Magistrate, Madhubani in Rajnagar P. S. Case No.04 of 2013 for an offence



punishable under Sections 323, 420, 423, 465, 466, 468, 471, 504, 506/34 of the I.P.C. read with Section 120B of the I.P.C.

Initially, a complaint petition was filed on behalf of opposite party no.2, which was sent to the Police Station concerned on the basis of which Raj Nagar P. S. Case No.04 of 2013 was registered whereupon investigation commenced. After concluding the same, final form was submitted under the garb of land dispute differing there from, by the order impugned, the learned lower court took cognizance of an offence as indicated above.

Allegation as levelled in the complaint petition discloses that Khata No.49, Khesra No.9 and 190/345, Total 11 kattha, 14 dhoor happens to be self-acquisitioned made by father of the opposite party no.2 whereupon since after purchase, they are coming over the land exclusively. It has further been stated that petitioner/ accused Mahendra Jha, who happens to be uncle of the opposite party no.2/ complainant had sold away some portion of the land in favour of other co-accused Satish Kumar Jha, Navin Kumar Jha and Pradeep Kumar Jha, son of Bhagwan Jee Jha vide sale deed dated 25.06.2012. Although, they have not come over the land. After coming about aforesaid illegal transaction, the complainant/ opposite party no.2 gone to Registry Office, took out



certified copy of the sale deed and then, had approached Mahendra Jha over aforesaid illegal activities whereupon the accused abused as well as threatened of dire consequence.

By way of supplementary affidavit, petitioners have brought up judgment of Partition Suit No.224 of 1971/ 54 of 2000 along with Partition Suit No.109 of 1981 having brought by Upendra Jha and others vs. Mahendra Jha and others as well as Narendra Jha vs. Mahendra Jha, out of whom, Upendra Jha happens to be father of opposite party no.2. In the aforesaid Partition Suit, one of the issues whether the aforesaid properties along with other happens to be self-acquisitioned of Upendra Jha discussed under the Issue No.10 and the same had been decided under Para-35. For better appreciation, the relevant finding of the learned lower court below on that very score is quoted below:-

*No document has been filed on behalf of the plaintiff to prove about the self-acquisition of the lands mentioned in Schedule-V. Since Upendra Jha has not said anything in his evidence to support this contention rather the two sale deeds show that some of the lands were purchased by Upendra Jha, so, in absence of the evidence of Upendra Jha that cannot be said that these lands are the self-acquired properties of Upendra Jha. So this issue is decided against plaintiffs*



*of Partition Suit No.109 of 1981.*

Once there happens to be finding of the Competent Court, which till today has not been set aside. Though, an appeal is pending as stated on behalf of respective parties on account thereof, the assertion having made on behalf of opposite party no.2 that aforesaid properties happen to be self-acquisitioned of his father Upendra Jha, is found non-tenable in the eye of law and that being so, would be the ultimate fate of the instant prosecution which happens to be based upon aforesaid theme.

Accordingly, the order impugned is set aside. Petition is allowed.

However, opposite party no.2 will be at liberty to take proper legal recourse for cancellation of the sale deed, if so desires, before the proper competent forum.

**(Aditya Kumar Trivedi, J)**

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