

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.29488 of 2014

Arising Out of PS.Case No. -837 Year- 2013 Thana -COMPLAINT CASE District- BANKA

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1. Diwakar Mishra S/o Lt. Bhaleshwar Mishra @ Baleshwar Mishra
 2. Prabhakar Mishra S/o Late Bhaleshwar Mishra @ Baleshwar Mishra
 3. Phul Mishra @ Indu Shekhar Mishra S/o Diwakar Mishra
 4. Karu Mishra @ Prem Shankar Mishra S/o Diwakar Mishra
 5. Tuna Mishra @ Bibhakar Mishra S/o Late Baikunth Mishra
 6. Sujit Mishra @ Sujit Kr. Mishra S/o Late Baikunth Mishra
 7. Sunil Mishra S/o Late Baikunth Mishra
 8. Anil Mishra @ Anil Kr. Mishra S/o Late Baikunth Mishra
 9. Arbind Mishra @ Arbind Kumar Mishra S/o Late Baikunth Mishra

All resident of Mohalla - Vijaynagar, Banka, P.S. - Banka, District - Banka.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Shashik Yadav @ Shashi Yadav S/o Late Hiralal Yadav Resident of village - Babutola, Ward no. 8 Idgah Road, Banka, P.S. - Banka, District - Banka.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ajay Mukherjee, Advocate.

For the Opposite Party/s : Mr. Md. Mustaque Alam, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 30-08-2017

Heard learned counsel for the petitioners and learned counsel for the State. None appears on behalf of the O.P. No. 2.

2. The petitioners have filed this application, under Section 482 of the Code of Criminal Procedure, 1973, for quashing the order dated 06.06.2014 passed by Mr. N.K.Priyadarshi, Judicial Magistrate, 1st Class, Banka in Complaint Case No. 837C of 2013



thereby taking cognizance of offence under Sections 147, 323, 385 and 504 of the Indian Penal Code.

3. Learned counsel appearing on behalf of the petitioners submits that no offence of extortion or assault is made out even taking in account the entire allegation levelled in the complaint, at best it is a case of civil dispute and in order to put pressure to the petitioners for resolving the civil dispute, complainant has filed this criminal case by lodging a complaint. Further submission is that there was neither oral agreement of sale with the complainant nor any document or any material produced during inquiry. In fact, complainant came into illegal possession of the land of the petitioners for which petitioners have filed a Case No. 19 of 2013-14 before the Deputy Commissioner Land Reforms, Banka under the provision of Bihar Land Dispute Resolution case and by order dated 12.06.2013, after hearing both sides, concluded that the complainant has taken possession of the land of the petitioners illegally and has got no any document to support his claim. The complainant preferred appeal before the Commissioner, Bhagalpur Division, against the order of the D.C.L.R., Banka but the appeal was turned down holding that the appellant (complainant herein) failed to show any proof of payment of any amount to the petitioners.

4. Having considered rival submissions and on perusal of



record, the Court finds that except the alleged oral agreement, as stated in the complaint, for agreement of sale, there is no other material rather some sterling document was filed by the petitioners showing *prima facie* that complainant encroached upon their land and the concerned revenue authorities have passed order in favour of the petitioners. So, the dispute in the present case appears predominantly civil in nature and no *prima facie* case considering allegation as well as material produced during enquiry, is made out. Therefore, entire criminal proceeding including order taking cognizance dated 06.06.2014 passed by Mr. N.K.Priyadarshi, Judicial Magistrate, 1st Class, Banka in Complaint Case No. 837C of 2013 against the petitioners is quashed. The application stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.09.2017
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