

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.44657 of 2013**

Arising Out of PS.Case No. -null Year- null Thana -null District- BHAGALPUR

=====

Anjum Ara @ Manjura Khatoon Wife of Syed Salim Resident of Village- Sanhauli,  
P.S.- Jagdishpur, District- Bhagalpur

.... .... Petitioner

Versus

1. The State of Bihar  
2. Abdul Quddus Son of Sk. Kallu, Resident of Village- Sanhauli, P.S.- Jagdishpur,  
District- Bhagalpur at present Head Maulvi, Madarsa Mojahidul Islam, Mojahidpur,  
P.S.- Mojahidpur, District- Bhagalpur

.... .... Opposite Parties

=====

**Appearance :**

For the Petitioner/s : Md. Najmul Hoda, Advocate

For the Opposite Party/s : Mr. Nityanand Tiwari, APP

=====

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

**ORAL JUDGMENT**

**Date: 10-05-2017**

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 23.11.2012 passed by the learned Judicial Magistrate, Bhagalpur in Complaint Case No. C1791 of 2012 by which the petitioner and others have been summoned to face trial under Sections 323, , 379 and 385/34 of the Indian Penal Code.

2. The complainant-opposite party no.2 Abdul Quddus has stated in complaint that he had purchased a piece of agricultural



land through registered sale deed on 4<sup>th</sup> of July, 2008 appertaining to Khata No.26, Khesra No. 221 measuring 71 ½ decimals at mauja Dhauri, P.S.-Jagdishpur, District-Bhagalpur and after purchasing the land, the land, the same was also mutated in his name. He has alleged that when the accused persons came to know about the purchase of the aforesaid agricultural plot, they conspired together in order to grab the land for which the complainant made a complain before the Gram Panchayat. Being moved by the complain, a notice was sent to the accused persons by the Gram Panchayat. The accused persons sought for adjournment and, thereafter, they never appeared before the Gram Panchayat. It is further alleged that on 05.08.2012, the complainant went to manage labourers and when he came back to his field at about 10 am., the accused persons came at the field and started abusing him. They demanded Rs.25,000/- as rangdari in lieu of purchase of land. They assaulted him with fists and slaps and accused Md. Salim took away Rs. 2,000/- from his pocket whereas the accused Rafi Alam took away his wrist watch. On hue and cry raised by him, several persons from the neighbouring field came there and in their presence they again threatened him to deliver Rs. 25,000/- Rangdari Tax within ten days. When the complainant went to lodge F.I.R., the police officer present there advised him to file complaint before the court.

3. After filing of the above complaint, certain



witnesses were examined on behalf of the complainant in course of inquiry pursuant to which, the learned Magistrate summoned the petitioner and others to face trial under Sections 323, 379 and 385/34 of the Indian Penal Code vide impugned order dated 23.11.2012.

4. It is contended by the learned counsel for the petitioner that the land in question was purchased by the petitioner through registered sale deed on 15.09.1990 in the name of her husband namely, Syed Salim and after purchase the same, the land was mutated in his name and since then, the same was coming in peaceful possession and occupation of the petitioner. He contended that the opposite party no.2 purchased the said land through registered sale deed on 4<sup>th</sup> of July, 2008 and since that date, he is disturbing the peaceful possession and occupation of the petitioner upon the land in question. He contended that the complainant-opposite party no.2 along with others went to the land in question and the petitioner forcibly removed ten trees of mango and also abused and threatened him with dire consequences for which the petitioner filed Complaint Case No. C1535 of 2012 against the complainant and others in the court of Chief Judicial Magistrate, Bhagalpur. He contended that the instant case is nothing but a counterblast of the aforesaid case which has been filed by the petitioner prior to the filing of this case.

5. Though the complainant has engaged Mr. Praveen



Kumar and Mr. Nihar Nandan Ambasta, Advocates to contest the matter, despite repeated calls, the lawyers representing the complainant did not appear before the court.

6. Mr. Nityanand Tiwari, learned Additional Public Prosecutor has appearing on behalf of the State has contended that in view of the allegations made in the complaint, which has been supported by the complainant and his witnesses during inquiry, the learned Magistrate has rightly summoned the petitioner and others to face trial. He contended that the defence of the accused cannot be appreciated by the court for quashing the criminal prosecution at the initial stage.

7. I have heard learned counsel for the petitioner and the State and carefully perused the record.

8. The plea taken by the petitioner that the land in question had been purchased by the petitioner through sale deed on 15.09.1990 in the name of her husband namely Syed Salim and after almost 18 years of the said purchase, the said land has been purchased by the opposite party no.2 through registered sale deed on 04.07.2008, has not been denied by the complainant by way of filing any counter affidavit. It is also not denied that prior to the institution of the present case the petitioner had instituted Complaint Case No. C-1535 of 2012 against the opposite party no.2 and others in the court of Chief



Judicial Magistrate, Bhagalpur.

9. In that view of the matter, I find substance in the argument of the learned counsel for the petitioner that the instant complaint has been filed in retaliation to the complaint filed by the petitioner against the complainant and others. Apparently, the prosecution launched by the complainant is attended with malafide.

10. In that view of the matter, in order to prevent the abuse of the process of the court as also to serve the ends of justice, it is deemed necessary to exercise the power conferred upon this Court under Section 482 of the Code of Criminal Procedure.

11. Accordingly, Complaint Case No. C-1791 of 2012 including the impugned order dated 23.11.2012 passed by the learned Judicial Magistrate, Bhagalpur is hereby quashed.

12. The application stands allowed.

**(Ashwani Kumar Singh, J.)**

Sanjeet/-

|                      |            |
|----------------------|------------|
| AFR/NAFR             | NAFR       |
| CAV DATE             | NA         |
| Uploading Date       | 16.05.2017 |
| Transmission<br>Date | 16.05.2017 |

