

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.47349 of 2014

Arising Out of PS.Case No. -584 Year- 2013 Thana -PATNA COMPLAINT CASE District-

PATNA

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1. Bindeshwari Chaudhary S/o late Babu Ram Chaudhary
2. Prasant Kumar S/o Bindeshwari Chaudhary Both are resident of Modan Ganchhi, P.S. Mokama, Dist - Patna A/P Mohalla - JAgdeo Nagar, P.S. - Rupaspur, Bailey road, Patna , Ward N. 37, Dist Patna.
3. Deva Devi W/o Tilakdhari Tati
4. Tilakdhari Tati S/o Hulash Tati
5. Kanchan Kumar S/o Tilakdhari Tati All are residents of Modanganchhi, P.S. Mokama, Dist - Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Rajendra Chaudhary S/o Late Babu Ram Chaudhary resident of Gardanibagh Road No. 4, Q. No. 5, P.S. Gardanibagh, Dist - Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Surendra Kumar Pandey, Advocate
For the Opposite Party/s : Mr. B.N. Pandey (APP)

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date: 15-11-2017

This petition under Section 482 of Cr.P.C. has been filed for quashing the order dated 27.03.2014 passed by Judicial Magistrate 1st Class, Barh, taking cognizance against the petitioners under Sections 323, 380, 506 of I.P.C. in Complaint Case No. 584(C) of 2013.

2. Briefly stated, the facts of the case is that at relevant



time complainant was posted as A.G.M., in Bharat Sanchar Nigam Ltd. Patna and lived in Government Quarter.

3. Allegation against the accused petitioners are that they broke the lock of the house of the complainant opposite party No. 2 on 22.07.2013 and entered into the house and took away all materials in their possession kept in his house. Complainant came to his house after receiving said information on 23.07.2013 where accused petitioners were present and thereafter inquired into the matter, upon which accused petitioners started abusing the complainant and assaulted him and pushed him out from the house and thereafter complainant filed a Complaint Case in Court of Barh for offences under Sections 452, 380, 427, 323, 506, 120(B) of I.P.C.

4. On the basis of complaint petition and materials available on record, the court below took cognizance of the offence under Sections 323, 380, 506 of I.P.C. by its order dated 27.03.2014 passed in Complaint Case No. 584 (C) of 2013.

5. It has been submitted by learned counsel for the petitioners that complainant opposite party No. 2 and petitioner No. 1 are full brothers and they are living separately. There had been a family partition between the parties and one Memorandum of Partition of joint property was executed on the basis of compromise in



presence of witnesses on 28.04.2010. The petitioner No. 1 sold his share by absolute registered sale deed to one Smt. Deva Devi and she came in physical possession over the purchased land which was not liked by the complainant and filed Complaint Case against all. Complainant has also filed a Title Suit against the petitioners and others and petitioner No. 1 has also filed a complaint case against the opposite party No. 2.

6. On the basis of Complaint petition and examination of complainant on S.A. and statement of inquiry witnesses the court below found a prima facie case made out against the petitioners and took cognizance of the offence under Sections 323, 380, 506 of I.P.C. and issued summons for their appearance. At the time of taking cognizance on the basis of materials available on record, the court below has to form a prima facie opinion if any offence is made out against the accused persons or not. The defence of the accused cannot be examined at that stage. The High Court in its inherent jurisdiction cannot substitute its view for the summons order issued by the Trial Court, as such I am not inclined to interfere in the order dated 27.03.2014 taking cognizance against the petitioners at this stage. However, petitioners are at liberty to raise all the issues as raised in this petition as well as other issues available to them in law



at the time of framing of charge if not already framed.

7. With the said liberty and observations the present
petition is disposed of.

(S. Kumar, J)

veena/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

