

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.2164 of 2015

Arising Out of PS.Case No. -1009 Year- 2010 Thana -NALANDA COMPLAINT CASE District-
NALANDA (BIHARSHARIFF)

- =====
1. Mukesh Kumar Son of Chandeshwar Gope
 2. Krishna Kumar Son of Chandeshwar Gope
 3. Chandeshwar Gope S/O Late Makur Gope
 4. Navin Gope Son of Krishan Kumar
 5. Jamindra Gope Son of Late Kishori Gope All are Resident of Village Kesoura, P.S-Chandi, Distt.-Nalanda

.... Petitioners

Versus

1. The State of Bihar
2. Naresh Prasad Son of Late Pripit Gope All are Resident of Village Kesoura, P.S Chandi, District Nalanda

.... Opposite Parties

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Appearance :

For the Petitioner	:	Mr. Sanjay Kumar, Advocate
For the State	:	Mr. Shyam Kr. Singh, APP
For O.P. No.2	:	Mr. Anil Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 14-02-2017

The petitioners are accused in Complaint Case No.1009(C) of 2010. They have challenged the order of issuance of process under Section 204 Cr.P.C. by the learned court below vide order datd 16.08.2011 to face trial for offences under Sections 323, 147, 379, 447 and 504/34 of the Indian Penal Code.

2. The challenge is on the ground that the entire criminal prosecution suffers from malice and mala fide of the complainant.

3. Allegation in the complaint petition is that the complainant had purchased 4 decimals of Plot No.375 in Khata No.94 out of total area of 12 decimals by registered sale deed dated



19.04.2010 from Parshuram Mahto, Son of Bhagwat Mahto. The complainant had sown and grown crops on that land, which the petitioners were cutting and when the complainant forbid the petitioners committed assault and theft.

4. Submission of the petitioners is that petitioner Mukesh Kumar had already purchased 4 decimals of Plot No.375 out of total area of 9 decimals from Bhagwat Mahto, the father of the vendor of the complainant, through registered sale deed dated 20.04.1998. Petitioner Mukesh Kumar further purchased the remaining 4 decimals of Plot No.375 from the mother of the vendor of the complainant through registered sale deed dated 28.07.2008. Thus the petitioners' side are first purchasers from admitted owners of the land because the complainant also claims that the vendors had title over the transferred land. Therefore, at best this case may be of a civil dispute. Hence, criminal prosecution is abuse of the process of the Court.

5. Learned counsel for the complainant submits that at the stage of cognizance, only *prima facie* case is to be looked into and the probable defence can be examined at the stage of trial itself.

6. On the basis of claim of the parties over the referred land, it is evident that this is a case of purely civil dispute and the inclination is in favour of the petitioners as they are first purchasers.



Therefore, the criminal prosecution has been brought just to put pressure with mala fide intention and the same cannot be allowed to go on while exercising power under Section 482 Cr.P.C.

7. Accordingly, the impugned order is set aside and this application stands allowed.

(Birendra Kumar, J.)

S.Kumar/-

AFR/NAFR	N.A.F.R.
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