

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.47355 of 2013

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

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1. Manju Devi W/O Sanjay Kumar Resident Of Village- Rasalpur, Police Station- Alipur, District- Gaya
 2. Sanjay Kumar S/O Prahalad Sharma Resident Of Village- Rasalpur, Police Station- Alipur, District- Gaya
 3. Shree Niwas Sharma S/O Late Shiv Kumar Singh Resident Of Village- Rupaspur Salempur, Police District Alipur, District- Gaya
 4. Krishnandan Kumar S/O Vijay Sharma Resident Of Village- Lodipur, Police Station- Mah, District- Gaya
 5. Vikash Kumar S/O Late Kamta Sharma Resident Of Mohalla- Rikavganj, Police Station- Tekari, District- Gaya

.... Petitioners

Versus

1. The State of Bihar
2. Jitendra Sharma, son of Late Shiv Kumar Singh, village : Rupaspur, Salempur, P.S. : Alipur, District- Gaya.

.... Opposite Party

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Appearance :

For the Petitioners : Mr. Sanjeev Ranjan, Advocate
For the State : Mr. C. Jawahar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 28-06-2017

Petitioners have challenged the order dated 29.7.2013 passed in Complaint case No.292 of 2013 by Judicial Magistrate, Ist Class, Gaya whereby cognizance has been taken of the offence under Sections 323 and 379 of the Indian Penal Code.

2. Learned counsel for the petitioners submits that the allegation is that the petitioner no.3 executed a sale deed with respect to land of joint property in favour of petitioner nos.1 and 2. The complaint was filed under Sections 323, 379, 420, 467, 468, 504 and



120B of the Indian Penal Code but the main allegation of the complainant that Shree Niwas Sharma the petitioner no.3 has committed forgery by executing sale deed in favour of Manju Devi petitioner no.1 relating to the land in joint possession but his case was disbelieved considering evidence adduced at enquiry stage but the court below wrongly took cognizance under Sections 323 and 379 of I.P.C. which is superfluous and false. None of the enquiry witnesses have supported the allegation of assault and theft. The complainant is the own brother of the petitioner no.3 and due to property dispute in order to wreak vengeance, this case was lodged. In fact Shree Niwas Sharma sold his purchased land to Manju Devi petitioner no.1 and petitioner no.2 is her husband and rest accused are witnesses of the sale deed.

3. The learned A.P.P. has supported the impugned order.

4. Having considered the rival submissions and on perusal of the evidence on record I find that complainant in his statement recorded under solemn affirmation admits that the land in question was earlier purchased in the name of his brother, Shree Niwas Sharma petitioner no.3. There is allegation in the complaint that when complainant went over the land in question for constructing a house then got knowledge of execution of sale deed so he went to enquire from his brother Shree Niwas Sharma then they assaulted him



and committed theft. The entire case appears absurd and improbable. None of two enquiry witnesses have stated that the petitioners ever abused, assaulted the complainant and committed theft. The complainant appears to have filed the same in order to wreak vengeance against his brother Shree Niwas Sharma petitioner no.3 as he has sold the property standing in his name in favour of petitioner nos.1, so continuation of criminal proceeding in the court below in this case would be abuse of the process of the Court. Therefore, the impugned cognizance order dated 29.7.2013 and subsequent criminal proceeding are set aside.

5. This quashing petition stands allowed.

(Arun Kumar, J)

N.H./-

AFR/NAFR	NAFR
CAV DATE	N/A
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