

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.29090 of 2013

Arising Out of P.S.Case No.2140 Year- 2008 Thana -GOPALGANJ COMPLAINT CASE District-
GOPALGANJ

- =====
1. Balmiki Singh S/O Late Jagannath Singh Resident of Mohalla- Sareya Ward No.-4, P.S.- Gopalganj, Distt.- Gopalganj.
 2. Sadanand Singh S/O Kailash Pati Singh Resident of Village- Bhitbherwa, P.S.- Gopalganj, District- Gopalganj
 3. Ali Imam S/O Md. Israyal R/V- Ekderawa, P.S.- Gopalganj, District- Gopalganj
 4. Ambika Prasad Yadav @ Ambika Yadav S/O Late Chander Yadav R/M Harakhuwa, P.S.- Gopalganj, District- Gopalganj
 5. Gang Dayal Yadav S/O Late Mumar Yadav R/M Jangalia, P.S.- Gopalganj, District- Gopalganj
 6. Radhika Devi W/O Gang Dayal Yadav R/M Jangalia, P.S.- Gopalganj, District- Gopalganj
 7. Virendra Yadav S/O Late Ram Chandra Yadav R/V Vishunpurwa, P.S.- Siwan, Distt.- Siwan.

.... Petitioners

Versus

1. The State Of Bihar
2. Raja Ram Yadav S/O Late Munar Yadav R/V Amwa Nakched, P.S.- Gopalganj, Distt.- Gopalganj

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Mukesh Kumar Singh, Advocate
For the Opposite Parties : Mr. Humayu Ahmad Khan, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 10-10-2017

This criminal miscellaneous application under Section 482 of the Cr.P.C. has been filed to quash the order dated 15.10.2011 passed by learned Chief Judicial Magistrate, Gopalganj in Trial No.903 of 2012 arising out of Complaint Case No.2140 of 2008 whereby and whereunder the learned CJM took cognizance for the offence under Sections 420 of the IPC against the petitioners.



2. Heard learned counsel for the petitioners and learned APP for the State. The Opposite Party No.2 in spite of service of notice did not appear to oppose this criminal miscellaneous application.

3. The Opposite Party No.2 and petitioner no.5 are full brothers and the petitioner no.6 is wife of petitioner no.5. The Opposite Party No.2 and petitioner no.5 duly executed and registered a deed of Panchnama in favour of petitioner nos.1 to 4, 7 and two others authorizing them to partition their landed property amongst them. The said Panches (arbitrators) partitioned their land against which the complainant has alleged that they fraudulently gave valuable property in the share of his brother and his wife (petitioner no.6 and 7). A proceeding under Section 144 of the Cr.P.C. was initiated over one katha and twelve and half dhurs of land of plot no.128 and 129 which after hearing decided in favour of petitioner nos.5 and 6 as per order dated 04.01.2008 passed by SDM Gopalganj in Case No.2373 of 2007. The learned SDM while dropping the proceeding has held that the said land was purchased by petitioner no.7 and she was paying municipal tax with respect to the said land and house. The learned SDM further initiated a proceeding under Section 107 of the Cr.P.C. From para-5 of the complaint petition, it appears that the Opposite Party No.2 has filed a partition suit on



28.05.2008 against the petitioner nos.5 and 6 in the court of Sub-Judge, Gopalganj which is pending for disposal. The documents on record and also the averment made in the complaint petition, it is apparent that there is bonafide land dispute between the Opposite Party No.2 and petitioner nos.5 and 6. The other petitioners are arbitrators who were duly appointed by both the brothers as per registered document dated 17.08.2007. The dispute between the parties is purely a civil dispute and the complainant has remedy to set aside the award duly granted by the arbitrators under the provision of Arbitration Act. The criminal prosecution of the petitioners in the facts and circumstances of the case appears to be misuse of the process of the Court.

4. In view of the above discussions, this criminal miscellaneous application is allowed and the order dated 15.10.2011 taking cognizance against the petitioners is hereby quashed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	17.10.2017
Transmission Date	17.10.2017

