

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.18919 of 2013

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

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1. Bimla Devi Late Jagarn Ath Singh Tikia Toli, Chai Tola, P.S. Sultanganj, Distt. Patna
 2. Rakesh Kumar Late Jagarnath Singh Tikia Toli, Chai Tola, P.S. Sultanganj, Distt. Patna

.... Petitioners

Versus

1. The State Of Bihar
2. Baijnath Singh, son of Sri Harinandan Mahto, resident of Tikia Toli, Chai Tola, PS Sultanganj, District Patna

.... Opposite Party

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Appearance :

For the Petitioners	:	Mr. Krishna Prasad Singh, Sr. Advocate Ms. Meena Singh
For the State	:	Mr. Aditya Narayan Singh No. 1, APP
For the O.P. No. 2	:	Mr. Alok Kumar Sinha, Sr. Advocate Mr. Bhola Kumar

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 02-11-2017

Heard learned Counsel for the petitioners, learned Counsel for the State as well as the learned Counsel appearing on behalf of Opposite party No. 2.

2. The petitioners by invoking the inherent jurisdiction of this Court by filing a petition under Section 482 of the Code of Criminal Procedure seek quashing of the cognizance order dated 24.8.2007 passed by learned ACJM Patna City in C.B.Case No. 397 of 2007, thereby taking cognizance of the offence under Section 188 of the IPC.



3. Learned Counsel for the petitioners submits that earlier the petitioners had moved this Court challenging the order dated 15.6.2007 passed by the Sub Divisional Magistrate, Patna City, whereby he took decision to file a complaint against the petitioners under Section 188 IPC and the said order was set aside by order dated 23.8.2010 by a coordinate Bench of this Court in Cr. Misc. No. 6643 of 2009, but inadvertently order dated 15.6.2007 is referred as cognizance order. The case of the petitioners is that the construction over the land in question was already made prior to institution of the proceeding under Section 147 Cr.P.C., so they had not violated any prohibitory order passed by the Sub Divisional Magistrate, Patna City and considering that ground the said order was quashed, but prior to passing of the order already complaint was filed in the Court of ACJM Patna City and cognizance has been taken now. Earlier there was no cognizance order passed by the Court.

4. Learned Counsel appearing on behalf of Opposite party No. 2 opposes the petition but concedes that earlier order passed by the Sub Divisional Magistrate, Patna City was quashed by this Court.

5. Having considered the submissions of both sides and on perusal of the record it transpires that the decision taken by the Sub Divisional Magistrate for instituting a complaint under Section 188 IPC itself was quashed earlier by this Court. Therefore, once the basis of the complaint already does not remain in effect, the cognizance order cannot be sustained. Hence, entire criminal proceeding against the petitioners inclusive of the cognizance order dated 24.8.2007 passed in C.B. Case No.



397 of 2007 is hereby quashed.

6. Accordingly, the application stands allowed.

(Arun Kumar, J.)

Snkumar/-

AFR/NAFR	
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