

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.30280 of 2012

Arising Out of PS.Case No. -1204 Year- 2008 Thana -null District- MUZAFFARPUR

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1. Arbind Kumar S/O Late Lakhat Sharma R/O Village- Majhauri Pachdahi, P.S- Sakra, District- Muzaffarpur.
 2. Surendra Kumar S/O Late Lakhat Sharm R/O Village- Majhauri Pachdahi, P.S- Sakra, District- Muzaffarpur.
 3. Indu Devi D/O Late Lakhat Sharma W/O Late Banarsi Prasad Singh Resident Of C/O Samair Vats, 501, Senior Height Street No. 3, Lama Garden, Manik Hyderabad- 500089 (A.P) Akrauthi.
 4. Urmila Devi D/O Late Lakhat Sharma C/O Dr. B.N. Choudhary, R/O 154- Keshavkunj, Plot No. 15A, Flat No. 154, Dawarika, Sector- 22, New Delhi- 110077

.... Petitioners

Versus

1. The State Of Bihar
2. Ram Binay Thakur S/O Saryau Prasad Thakur R/O Village- Majhauri Pachdahi, P.S- Sakra, District- Muzaffarpur
3. Krishna Mohan Sharma S/O Late Gorakh Thakur R/O Village- Majhauri Pachdahi, P.S- Sakra, District- Muzaffarpur
4. Rajesh Kumar @ Bablu Kumar S/O Krishna Mohan Sharma R/O Village- Majhauri Pachdahi, P.S- Sakra, District- Muzaffarpur

.... Opposite Parties

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Appearance :

For the Petitioners : Mr.
For the Opposite Parties : Mr. Humayu Ahmad Khan, APP
For the Informant : Mrs. Bela Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 03-05-2017

Heard the learned counsel for the petitioners, learned APP for the State as well as learned counsel for the Informant.

2. Petitioners seek quashing of order dated 16.12.2008 passed by SDJM, Muzaffarpur (West) in Complaint Case No.1204 of 2008/Trial No.1403 of 2011 whereunder finding prima-facie case for the offence under Sections 323, 341, 379 and 384 of the IPC all the petitioners were summoned.

3. The facts in brief is that the Opposite Party No.2 filed a complaint case on the file of SDJM, West, Muzaffarpur alleging therein that on 27.07.2008 his Bataidar gave an information over his phone that these petitioners along with



other co-accused were harvesting the Janera crop. The complainant immediately rushed by his vehicle and reached near Muradpur Chowk where these petitioners along with five or six unknown intercepted the vehicle and assaulted him. They snatched his gold chain, cash amount of Rs.3,000/- and some important papers from his possession. They demanded an amount of Rs.3,00000/- also as *Rangdari*. The court below recorded statement of complainant and other witnesses in course of inquiry and finding prima-facie case for the offence under sections 323, 341, 379 and IPC, ordered for issuance of summons against the petitioners.

4. The counsel for the petitioners submits that on bare perusal of complaint petition, it is evident that no case is made out for the criminal prosecution of the petitioners. The dispute between the parties is purely a civil dispute. The land measuring three kathas of plot no.1232, which is claimed by the complainant is the ancestral land of the petitioners. The total area of plot no.1232 is 26 decimals. The said land originally belonged to Jangu Thakur who died leaving behind four sons. The petitioners are sons and daughters of one of his son, namely, Lakhat Sharma, having one fourth share in the said land. The other three sons of Jangu Thakur had/have one fourth share each. The complainant fraudulently and illegally got two sale deeds executed in the name of his son, namely Abhinesh Kumar from some of the heirs of Gorakh Thakur son of Jangu Thakur. The vendors of the complaint's son have executed sale deeds beyond their due share. The complainant in order to take forceful possession over the said land has lodged the complaint case with false and frivolous allegation. He further submits that the petitioners having come to know about the fraudulent act of the complaint in getting the sale deeds executed, filed the partition suit no.571 of 2007 in the Court of Sub Judge-I, Muzaffarpur, in which he has impleaded the son of the complainant as defendant no.11. In the said suit the petitioners have challenged the validity of the sale deed of the complainant. He further submits that there are contradictions in the statement of the complainant and the witnesses.



He further submits that one of the petitioners, namely, Urmila Devi is residing in Canada since before the alleged date of occurrence and remaining petitioners were also not present in the village. The impugned order is not sustainable in law and is fit to be quashed.

5. The APP on the other hand opposed the submission.

6. On perusal of the complaint petition and materials on record, I find that the complainant claims the land in question by virtue of two registered sale deeds which were executed by co-sharers of the petitioners. The petitioners have filed a suit for partition of ancestral land including the land which is being claimed by the complainant. The son of the complainant in whose name the sale deeds have been executed is one of the party to the suit. In course of enquiry neither of the son of the complainant nor his maternal grand father who purchased the land, have been examined before the court below. The complainant and petitioners are resident of same place. The petitioners assert possession over the land since the time of their ancestor. I further find some contradictions also in the statement of complaint and witnesses on the point of occurrence. The dispute between the parties appears civil dispute relating to land and if the prosecution is allowed to continue against the petitioners it would amount to misuse of process of the Court and in this view of the matter, the impugned order is not sustainable.

7. Accordingly, the order dated 16.12.2008 passed by SDJM, Muzaffarpur (West) passed in Complaint Case No.1204 of 2008/Trial No.1403 of 2011 is quashed and the application is allowed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	N/A
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