

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.35880 of 2012

Arising Out of PS.Case No. -22 Year- 2011 Thana -null District- MUNGER

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Sudina Devi D/O Late Kalachand Thakur Resident Of Mohalla - Shadipur, P.S -
Kotwali, District - Munger, At Present Posted As Postal Peon, Head Post Office,
Munger.

.... Petitioner

Versus

1. The State Of Bihar.
2. Manohar Paswan Son Of Late Bhola Paswan Resident Of Mohalla Bekapur,
P.S. Kotwali, Distt. Munger.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Ashutosh Kumar Verma

For the Opposite Party/s : Mr. Jharkhandi Upadhyaya, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 17-05-2017

Heard Mr. Ashutosh Kumar Verma, the learned counsel
for the petitioner and Mr. Jharkhandi Upadhyaya, the learned APP
for the State.

2. The petitioner seeks quashing of the order dated
03.08.2011 passed by the learned Judicial Magistrate, 1st Class,
Munger in Complaint Case No. 22 C of 2011.

3. The facts in brief is that the Opposite Party No. 2 filed a
complaint case on the file of C.J.M., Munger alleging therein that
on 31.12.2010 when he was reading newspaper in his house, this



petitioner along with 4-1 SAF Constable and officer entered into his house and started assaulting. They abused the complainant and threatened him to vacate the house which was occupied by the Opposite Party No. 2 (complainant). The court below after recording the statement of the complainant on S.A. and statement of few other witnesses found a prima facie case for the offence under Section 323, 504/34 of the Indian Penal Code and ordered for issuance of summons against the petitioner.

4. Learned counsel for the petitioner submits that there is bona fide land dispute between the petitioner and the Opposite Party No. 2. The petitioner purchased the land measuring 12 decimal for a total consideration of Rs. 4,90,000/- from the co-sharer of the Opposite Party No. 2. The petitioner paid the entire consideration money to her vender as per bank draft and also got her name mutated in municipal record. The Opposite Party No. 2 in order to grab the land of his co-sharer, has filed a Title Suit No. 01 of 2011 alleging therein that he had already given an amount of Rs. 20,000/- for purchasing the said land. The Opposite Party No. 2 in the said title suit has prayed for adjudication of his title and also for declaration of the sale deed of the petitioner as 'Farji' transaction. The Opposite Party No. 2 has further claimed his title by virtue of



the adverse position also. The learned counsel for the petitioner further submits that the Opposite Party No. 2 filed title suit on 04.01.2011 and subsequently on 07.01.2011, he filed a complaint case to harass the petitioner with false and frivolous allegations. At the time of enquiry, the Opposite Party No. 2 has admitted this fact that he has already filed a title suit, but as the civil litigation takes much time, he has lodged the present complaint case. The allegations of assault, abusing and theft have been levelled to make the offence grave. The materials on record do not constitute any offence and so the impugned order is fit to be quashed.

5. The learned APP for the State, on the other hand, opposed the submissions. It has been contended that the learned Magistrate conducted enquiry and considering the materials available on record, took cognizance of offence against the petitioner.

6. On going through the submissions of both the parties and also perusing the annexures available on record, I find that the land dispute between the parties is admitted one. The petitioner purchased the land in question from one of the Opposite Party of the complaint petition, who admittedly is a co-sharer of the complainant. The Opposite Party No. 2 has filed a Title Suit No. 01



of 2011 wherein he has challenged the genuineness of the sale deed of the petitioner. The said Title Suit No. 01 of 2011 is pending before Sub-Judge, 1st at Munger. In the plaint of said title suit, the complainant has alleged that the cause of action arose on 27.12.2010 when this petitioner along with some anti social element visited at his house and threatened to vacate the suit premises. The said title suit was filed on 04.01.2011. The present complaint case was filed after three days wherein he has alleged the date of occurrence as 31.12.2010. There are contradictions as regards the date of occurrence as asserted in the title suit and the complaint petition. The dispute between the parties is purely a civil dispute. There are contradictions also in the statement of the complainant, his witnesses and also in the complaint petition on the point of manner of occurrence.

7. In view of discussions made above, I am of the view that the continuance of the prosecution of the petitioner in the present case is nothing, but an abuse of the process of the Court. The impugned order is fit to be quashed. Accordingly, the order dated 03.08.2011 passed by learned Judicial Magistrate, 1st Class, Munger in complaint Case No. 22C of 2011 alongwith entire proceeding is hereby quashed. This Criminal Miscellaneous



Application is allowed.

(Sanjay Kumar, J)

ajaypd./-

AFR/NAFR	NAFR
CAV DATE	N/A
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