

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.23547 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- BHABHUA (KAIMUR)

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1. Diwan Shamim Ahmad Khan, S/o Late Diwan Ashique Khan
 2. Diwan Isteyak Khan, S/o Diwan Ashik Khan
 3. Anisha Bibi, W/o Diwan Ahasanulla Khan
 4. Sabiha Khatoon, W/o Diwan Jawed Khan, All resident of village- Sarewa, P.S. Bhabua, District- Kaimur (Bhabua)
 5. Sima Khatoon, W/o Chhote Jawed, D/o Late Diwan Ahasanullah Khan, resident of village Mahen, P.S. Karimuddinpur, District- Gajipur (U.P.)

.... Petitioner/s

Versus

1. The State of Bihar
2. Nagina Bibi W/o Asfaque Khan, D/o Late Mustufa Khan, resident of Village – Sarewa, P.S. Bhabua, District- Kaimur, at present resident of village + P.O. Akhina, P.S. Nuaon (Ramgarh), District- Kaimur at Bhabua

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Ravi Shankar Sahay, Mr. Ajay Nandan Sahay Mr. Navin Kumar Jha Mr. Rajnish Kumar Mishra, Advocates
For the State	:	Dr. Rabindra Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 19-05-2017

Heard learned counsel for the petitioners. Notice was validly served upon opposite party No. 2 as is evident from the Order No. 8 dated 27.3.2014 of this Court but today when the matter is called out, none appeared on behalf of the Opposite Party No. 2.

2. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 24.5.2011 passed by the Chief Judicial Magistrate, Bhabua in Complaint Case No. 129 of 2011 by which the learned Magistrate



has taken cognizance under Sections 323 and 504 of the Indian Penal Code against the petitioners.

3. Learned counsel for the petitioners has submitted that this matter is purely a civil dispute. The petitioners have been made accused by the complainant mainly to harass them.

4. The allegation in the complaint petition is that daughter of late Diwan Mustafa Khan had got one son, namely, Kamruddin Khan. Land appertaining to Plot No. 274, R.S. Khata No. 110, area 27 decimals is recorded in the name of father of the complainant, namely, Mustafa Khan and the land appertaining to Khata No. 172, Plot No. 277 area 80 decimals was recorded in the name of her mother, namely, Hazara Bibi. The father of the complainant, Diwan Mustafa Khan died leaving behind the complainant and her mother and brother, as named in the complaint petition, as heirs. It is further alleged that after death of her father as per the family arrangement, 50 decimals of land from both the plots, i.e., 27 decimals from Plot No. 274 and 23 decimals from Plot No. 277 came in the share of the complainant which is exclusively in her possession since the said arrangement. The main allegation of the complainant is that her brother, Kamruddin Khan was a man of careless nature and was in the habit of taking liquor and by taking advantage of his such nature, the petitioner Nos. 1 and 2, pressurized



him to get the land transferred in their name and made a request to her and also to her husband but she opposed. The complainant learnt that the petitioner Nos. 1 and 2 in connivance with her brother and after hatching a plan, has filed a case before the Lok Adalat and on the basis of compromise got award prepared in their names. When the enquiry was made, after taking a copy of that award, then the complainant learnt that neither she nor her mother was made party in that case although her mother was alive on that date. It is further alleged that her brother Kamruddin had got no power to give the said land in favour of said persons. It was within knowledge of everybody that the aforesaid land was in the share of the complainant. The complainant went on 4.2.2011 to enquire about this fact, then she was abused by petitioner Nos. 1 and 2 and assaulted by petitioner Nos. 4 and 5 and petitioner No. 3 snatched her golden chain and they also took her thumb impression on plain paper.

5. From the nature of narration made in the complaint, it appears that both the parties are agnates and the instant complaint has been filed only on account of civil dispute. It further appears from the complaint that the alleged occurrence is said to have taken place in the year 2003 when the decree of the Lok Adalat was passed but the complaint has been filed in the year 2011 after death of the



brother of the complainant, Kamruddin Khan. Kamruddin Khan during his life time never filed any objection to the aforesaid decree of the Lok Adalat.

6. It is submitted on behalf of the petitioners that the complainant has filed Miscellaneous Case No. 1/2011 before the permanent Lok Adalat, Bhabua alleging that the award was obtained by the petitioners in the year 2003 by playing fraud upon the brother of the complainant.

7. From the impugned order, it appears that the court below after holding enquiry, has found prima facie case against the petitioners under Sections 323 and 504 of the Indian Penal Code.

8. The entire Lower Court Record has been received. From perusal of the S.A. of the complainant and the statements of other three witnesses recorded during enquiry by the learned Magistrate, it appears that the complainant has mainly levelled allegation of land dispute and accused persons attempting to get possession over the land. From narration of the complaint as well as S.A. of the complainant and the statements of the other witnesses, this Court is of the view that it is a matter of civil dispute. The Court below in a mechanical manner found a prima facie case without properly discussing the statements of the witnesses including S.A. of the complainant, for the offences under Sections



323 and 504 of the Indian Penal Code.

9. Accordingly, the impugned order dated 24.5.2011 passed by the Chief Judicial Magistrate, Bhabua in Complaint Case No. 129 of 2011 along with the entire criminal proceedings with regard to the petitioners is hereby quashed.

10. The application is, accordingly, allowed.

(Sanjay Priya, J)

S.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.05.2017
Transmission Date	

