

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.27410 of 2011**

Arising Out of PS.Case No. -07 Year- 2002 Thana –Complaint Case District- AURANGABAD

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1. Ram Chandra Tiwary son of Kamleshwar Tiwary
2. Anjani kumar Tiwary @ Munna Tiwary son of Ramchandra Tiwary
3. Awani Kumar Tiwary @ Chunchun Tiwary @ Chunchun son of Ramchandra Tiwary
4. Arvind Tiwary Kumar @ Bablu Tiwary @ Bablu son of Ramchandra Tiwary
5. Anand Kumar Tiwary @ Pancham Tiwari @ Pancham, son of Ram Chandra Tiwary
6. Alok Kumar Tiwary @ Vikas Tiwary son of Ramchandra Tiwary

All are residents of village -Basdiha,P.S.-Kutumba, P.O.-Hariharganj, District - Aurangabad

.... .... Petitioners

Versus

1. The State of Bihar
2. Tarkeshwar Tiwary son of Late Ram Lakhan Tiwary resident of Village Basdiha , P.S. -Kutumba, Dist.-Aurangabad,

.... .... Opposite Parties

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**Appearance :**

|                     |                                                                               |
|---------------------|-------------------------------------------------------------------------------|
| For the Petitioners | : Mr. Krishna Prasad Singh, Sr. Advocate<br>Mr. Mithilesh Kr. Singh, Advocate |
| For the State       | : Mr. Jitendra Kr. Singh, APP                                                 |
| For O.P. No. 2      | : Mr. Shailesh Kr. Singh, Advocate                                            |

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**CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN**

ORAL JUDGMENT

**Date: 19-04-2017**

Heard learned senior counsel for the petitioners, learned APP  
for the State as well as learned counsel for the opposite party no. 2.

2. The present application has been filed for quashing the  
order dated 13.06.2011 passed by learned Sessions Judge, Aurangabad  
in Criminal Revision No. 93 of 2010 as also the order dated 24.07.2010  
passed by the learned Judicial Magistrate, Ist Class, Aurangabad in  
Complaint Case No. 07 of 2002/ Tr. No. 1481 of 2010 by which the  
learned Magistrate has rejected the petition for discharge under



Section 245 of the Code of Criminal Procedure (for short, "Cr.P.C.") filed by the petitioners.

3. According to the complaint filed by the opposite party no. 2, when he went to his paddy field, all the accused persons came with *lathi*, *Bhala* etc. and started to assault him and took away the paddy worth of Rs. 1500/-.

4. Mr. Krishna Prasad Singh, learned senior counsel for the petitioners, submits that continuance of the criminal prosecution in the facts and circumstances of the case would amount to abuse of process of the court. A perusal of the complaint itself discloses that the same was not entertained by the Officer Incharge of the Police Station specifically on the ground that the allegations therein constituted land dispute for which he had to file a proper case in Aurangabad Court. Besides, in the earlier proceeding under Section 144 Cr.P.C., the Circle Officer's report vide letter no. 628 dated 06.10.2001 mentioned that the names of the respective fathers of the Petitioner No. 1 and the Opposite Party No. 2 were appearing in the demand register and receipts were being issued against joint demand. It was also stated that the said opposite party no. 2 was not in physical possession of the concerned part of the land. It is further submitted that no injury report has been brought on record to support the allegation of assault which is merely ornamental in nature.

5. Learned counsel for the opposite party no. 2 appears and



has been heard. It is submitted that having regard to the nature of the allegations in the complaint, the matter is liable to be decided by adducing evidence in trial.

6. Having heard learned counsel for the parties and on careful consideration of the materials on record, this Court finds merit in the application. There is joint demand in a demand register in the names of their respective fathers of the petitioner No. 1 and opposite party no. 2 and that opposite party no. 2 is not in physical possession of the land. These facts appearing in the report of the Circle Officer have not been disputed and no counter affidavit has been filed on behalf of the opposite party no. 2. There is bona fide land dispute between the parties. It thus cannot be said that the petitioners have committed theft of the crop of paddy worth Rs. 1,500/- attracting Section 379 of the Indian Penal Code. The accusation of assault remains ornamental in absence of any injury report and hence the offence under Section 323 IPC has also not been made out.

7. In the above view of the matter, this Court is of the view that continuance of the criminal prosecution against the petitioners amounts to abuse of process of the court. Accordingly, the order dated 24.07.2010 passed by the learned Judicial Magistrate, Ist Class, Aurangabad in Complaint Case No. 07 of 2002/ Tr. No. 1481 of 2010 rejecting the petition for discharge under Section 245 of the Cr.P.C. as well as the order dated 13.06.2011 passed by learned Sessions Judge,



Aurangabad in Criminal Revision No. 93 of 2010 are hereby quashed.

The application stands allowed.

**(Vikash Jain, J)**

B.T/-

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