

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.30288 of 2012

Arising Out of Complaint Case No. -3198 Year- 2011 Thana -Khaira District- SARAN

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1. Surendra Prasad Gupta @ Surendra Kumar Gupta S/o Late Hira Lal Sah Resident of Mohalla- Alloo Bazar Shiv Mahal, Police Station- Chapra Town, District- Saran at Chapra.
 2. Ramesh Kumar Gupta @ Ramesh Kumar S/o Late Hiralal Sah Resident of Mohalla- Alloo Bazar Shiv Mahal, Police Station- Chapra Town, District- Saran at Chapra.
 3. Sanjay Mishra S/o Shiv Shankar Mishra Resident of Mohalla- Alloo Bazar Shiv Mahal, Police Station- Chapra Town, District- Saran at Chapra.
 4. Yogendra Prasad Gupta @ Yogendra Prasad S/o Late Yavat Chandra Resident of Mohalla- Daldali Bazar, Police Station- Chapra Town, District- Saran at Chapra.
 5. Janardan Prasad Gupta @ Janardan Prasad. S/o Late Yavat Chandra Resident of Mohalla- Daldali Bazar, Police Station- Chapra Town, District- Saran at Chapra.
 6. Manoj Gupta @ Manoj Kumar S/o Late Ram Sewak Prasad Resident of Mohalla- Daldali Bazar, Police Station- Chapra Town, District- Saran at Chapra.
 7. Dilip Kumar Gupta S/o Om Prakash Gupta Mohalla- Loh Bazar, P.S- Chapra Town, Distt- Saran.
 8. Ravi Gupta @ Ravi Kumar S/o Narayan Sah Mohalla- Loh Bazar, P.S- Chapra Town, Distt- Saran.
 9. Sunil Kumar Sharma @ Sunil Sharma S/o Misrilal Sharma Resident of Mohalla- Mohan Nagar, Police Station- Chapra Town, District- Saran at Chapra.

.... Petitioner/s

Versus

1. The State of Bihar
2. Sanjay Kumar S/o Late Motilal Prasad Resident of Village Bara Takeya, Police Station- Khaira, District- Saran at Chapra, At Present Mohalla- Husse Chapra, Police Station- Chapra Town, District Saran At Chapra.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Vijay Kumar Srivastava
For the Opposite Party/s : Mr. Harish Kumar
For the State : Mr. Akhileshwar Dayal, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 10-05-2017

Heard Mr. Vijay Kumar Srivastava, the counsel for the petitioners, Mr. Harish Kumar, the counsel for the O.P. No. 2 (complainant) as well as Mr. Akhileshwar Dayal, APP for the State.



2. The petitioners seek quashing of the order dated 06.02.2012 passed by the learned Judicial Magistrate, 1st Class, Chapra in Complaint Case No. 3198(C) of 2011. The learned Magistrate, as per impugned order, finding *prima facie* case for the offence under Sections 147, 148, 323, 341, 448, 380, 452 and 454 of the Indian Penal Code, ordered for issuance of summons against the petitioners.

3. The facts in brief is that the O.P. No. 2 (complainant) filed a complaint case on the file of C.J.M., Chapra alleging therein that he was residing in the house on rent which was let out by his land lord. He has further alleged that on the date of occurrence, all the petitioners along with other co-accuseds armed with weapons forcibly entered into his house and started throwing his household articles and on protest they assaulted and damaged all his articles worth Rs. 2000-2500/-. The court below, in course of enquiry, recorded the statement of complainant and other witnesses and finding *prima facie* case, ordered for issuance of summons as stated above.

4. Learned counsel for the petitioners submits that the complainant is neither the tenant residing in the house in question nor his alleged landlord had right to let out the said house. The alleged landlord Bharat Kumar and his brothers claim to be son of one Jit Bahal Mahto. The said Jit Bahal Mahto allegedly acquired the land by virtue of registered sale deed dated 10.05.1947, which was



executed by one Shiv Prasad Mahto. He further submits that the said document is forged and fabricated and it was never executed by Shiv Prasad Mahto. In this regard, an information was sought from the District Sub-Registrar, Chapra under the Right to Information Act. The District Sub-Registrar, as per letter no. 109 dated 24.01.2012 furnished an information that the documents bearing no. 3951 dated 10.05.1947 has been pasted in register no. 1/1947 at page no. 42-43. The District Magistrate has been informed to get the matter inquired by the Vigilance Department. He further submits that the petitioners are in possession of the house standing over 8 katha 7 dhur of plot no. 70 of khata no. 83. The house has been let out to some of the tenants. The said land was acquired by virtue of registered sale deed. Some of the persons have greedy eyes over the said land who forcibly want to take possession over the said land. They on 13.11.2011 at about 09:00 AM attempted to take forceful possession by breaking the lock. The petitioners reported the matter to S.H.O. of Town P.S. on the same day. The matter was inquired and the concerned Police Station recommended to initiate proceeding under Section 144 of Cr.P.C. on 13.11.2011 vide non-F.I.R. No. 36 of 2011. After initiation of proceeding under Section 144 of Cr.P.C., the complainant (O.P. No. 2) has filed the present case with false and fabricated allegation. The dispute between the parties is purely a civil dispute relating to right



and title of the parties. There is absolutely no material on records constituting any offence as alleged in the complaint petition and so the order of summoning the petitioners is fit to be quashed.

5. Learned counsel for the O.P. No. 2 as well as APP for the State, opposed the submissions and submit that in course of inquiry, the complainant and other witnesses supported the allegation of assault and attempt to oust the complainant from the house in question.

6. On perusal of complaint petition and statement of witnesses recorded in course of inquiry, I find that there are contradictions in the complaint petition and statement of witnesses. The complainant has not stated as to from whom and when he took the premises on rent. He has not mentioned the details of item which has been thrown by the petitioners and other accuseds. It further appears that the present case was filed on 14.11.2011 and the proceeding under Section 144 of Cr.P.C. was initiated earlier i.e. on 13.11.2011 on the petition of the petitioners. Before recommending for initiating a proceeding under Section 144 of Cr.P.C., the police visited at the land in question and they locked the premises with the consent of both the parties. They were restrained by the administration from going over the said land. It further appears that the heirs of Jit Bahal Mahto has executed the Power of Attorney on 13.09.2011 in favour of Arun



Kumar Tiwary and others and after execution of the said Power of Attorney, both parties are asserting and title over the same. The witnesses examined at the inquiry are resident of different place and at the time of their examination, they have given different picture of occurrence. The dispute between the parties appears to be purely a civil dispute for which a proceeding under Section 144 of Cr.P.C. was initiated before institution of the present complaint case. The witnesses have also stated about the institution of proceeding under Section 144 of the Cr.P.C. over the said land. In the aforesaid circumstance, the order of summoning the petitioners would amount to misuse of process of Court.

7. In view of the discussions made above, the order dated 06.02.2012 passed by the learned Judicial Magistrate, 1st Class, Chapra, in Complaint Case No. 3198 (C) of 2011 is, quashed and this application is allowed.

(Sanjay Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	12.05.2017
Transmission Date	12.05.2017

