

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.37945 of 2012

Arising Out of PS.Case No. -545 Year- 2012 Thana -null District-
EASTCHAMPARAN(MOTIHARI)

- =====
1. Shambhu Thakur S/O Late Amar Thakur R/O Vill-Barwa Kanth Chapra, P.S.-Pipra, Distt-East Champaran
 2. Gandhi Thakur S/O Late Amar Thakur R/O Vill-Barwa Kanth Chapra, P.S.-Pipra, Distt-East Champaran
 3. Parmand Thakur S/O Gandhi Thakur R/O Vill-Barwa Kanth Chapra, P.S.-Pipra, Distt-East Champaran
 4. Lakhindra Thakur S/O Gandhi Thakur R/O Vill-Barwa Kanth Chapra, P.S.-Pipra, Distt-East Champaran
 5. Brij Kishore Thakur S/O Gandhi Thakur R/O Vill-Barwa Kanth Chapra, P.S.-Pipra, Distt-East Champaran
 6. Raju Thakur@Raju Nandan Thakur S/O Shambhu Thakur R/O Vill-Barwa Kanth Chapra, P.S.-Pipra, Distt-East Champaran
 7. Subhash Thakur S/O Shambhu Thakur R/O Vill-Barwa Kanth Chapra, P.S.-Pipra, Distt-East Champaran
 8. Nawlesh Thakur S/O Shambhu Thakur R/O Vill-Barwa Kanth Chapra, P.S.-Pipra, Distt-East Champaran

.... Petitioner/s

Versus

1. The State Of Bihar
2. Luxman Thakur S/O Late Raj Mandal Thakur R/O Vill-Barwa Kanth Chapra, P.S.-Pipra, Distt-East Champaran

.... Opposite Party/s

=====

Appearance :

For the Petitioners : Mr. Sunil Kumar, No.III, Adv.
For the State : Mr. Binod Shankar Modi, APP

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 01-09-2017

1. Heard learned counsel for the petitioners and learned counsel, appearing for the State.

2. This application has been filed for quashing the order dated 30-07-2012 passed by Sri S. K. Mishra, learned Judicial Magistrate-Ist Class, Sadar, Motihari, East Champaran in Enquiry Case No. 185 of



2012 arising out of Complaint Case No. 545 of 2012 by which, the learned Magistrate after holding injury u/S 202 Cr.P.C. found prima facie, against the petitioners for the offence under Sections-147, 323, 341, 379, 504 of the IPC.

3. Learned counsel for the petitioners has submitted that the impugned order is totally bad in law. The instant criminal prosecution has been launched by the complainant with mala fide intention only to harass the petitioners, who are owners of the land, as described in the complaint petition.

4. The complainant has alleged in the complaint petition that on 12-03-2012, the accused persons having formed unlawful assembly, came to the place of occurrence and cut away one mango tree worth Rs. 20,000/- (twenty thousand) from the land, as described in the complaint petition. The complainant forbade to do so, then they abused and assaulted him, and co-accused Shambhu Thakur gave threat and also extracted Rs. 5,000/- from the pocket of the complainant.

5. Counsel for the petitioners has submitted that the land, described in the complaint petition, appertaining to Khata No. 22 Khesera No. 292 area 8 Kathas 15 Dhurs situated in Village-Barwa Kanth Chapra, P.S. Pipra, District- East Champaran has been allotted in favour of petitioner Nos. 1 & 2 through final decree dated 14-09-



1995 passed by learned Sub Judge-III, Motihari in Partition Suit No. 195 of 1968 as contained in schedule-B of the Pleader Commissioner's report dated 26-10-1991 by making Thakhtabandi of the property and the same was confirmed by the learned Sub Judge-III. The allegation of cutting mango tree against these petitioners is totally false. The petitioners are owner of the property and having right, title and interest are in peaceful possession over the same. The instant complaint against the petitioners has only been filed in order to create disturbances.

6. The photocopy of final decree along with Pleader Commissioner's report passed by learned Sub Judge-III, Motihari in Partition Suit No. 195 of 1968 is annexed and marked as Annexure-2 to this petition.

7. The opposite party No. 2 has appeared through counsel but today, at the time of hearing, none appeared on behalf of opposite party No. 2.

8. Counsel for petitioners has further submitted that in the S.A. of the complainant and in statement of other witnesses, there are inconsistencies. The learned Magistrate did not take notice of those facts during inquiry. The entire family members of petitioner Nos. 1 & 2 have been made accused in this case just to harass the petitioners on account of aforesaid land dispute as mentioned in the complaint



petition which apparently belonged to them in terms of final decree passed in Partition Suit No. 195 of 1968 (Annexure-2 to this petition).

9. In these circumstances, this court is of the view that continuance of instant proceeding against the petitioners is an abuse of the process of court. The instant complaint has been filed with mala fide and maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite them due to private and personal grudge.

10. Therefore, the impugned order dated 30-07-2012 passed by Sri S. K. Mishra, learned Judicial Magistrate-Ist Class, Sadar, Motihari, East Champaran in Enquiry Case No. 185 of 2012 arising out of Complaint Case No. 545 of 2012 along with entire criminal proceeding against the petitioners is quashed.

11. This Cr. Misc. Application is *allowed*.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	11-07-2017
Transmission Date	11-07-2017

