

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.27843 of 2014

Arising Out of P.S.Case No.1586 Year- 2011 Thana -SARAN COMPLAINT CASE District-
SARAN

- =====
1. Mohan Kumar Verma Son of Late Bharat Prasad @ Bharat Pd. Verma
 2. Poonam Devi @ Poonam Kumari Wife of Shri Mohan Kumar Verma Both resident of Mohalla - Dahiyawa Tola, Salempur, P.S. - Chhapra Town, District - Saran.

.... Petitioners

Versus

1. The State of Bihar
2. Ashok Kumar Singh Son of Late Awadh Bihari Singh Resident of Mohalla - Salempur, Dahiyawa, P.S. - Chhapra Town, Chhapra, District - Saran.

.... Opposite Parties

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Appearance :

For the Petitioners	:	Mr. R.N.Prasad, Sr.Advocate
For the Opposite Party No.2	:	Mr. Rakesh Kumar, Advocate
For the State	:	Mr. Humayu Ahmad Khan, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 07-08-2017

This application under Section 482 of the Cr.P.C. has been filed to quash the order dated 21.11.2013 passed by Judicial Magistrate, Ist Class, Saran at Chapra in Complaint Case No.1586C of 2011 whereby and whereunder the learned Magistrate finding prima-facie case for the offence under Sections 323, 379 and 448/34 of the IPC ordered for summons against the petitioners.

2. Heard and perused the record.

3. The facts in brief is that the Opposite Party No.2 filed a complaint case no.1586 of 2011 on the file of CJM alleging inter-alia that on 28.06.2011 these petitioners along with two others came and started assaulting his labourers by lathi and danda and stopped the construction work which was going on. They assaulted the complainant with intention to commit his murder. They



took away cash amount of Rs.1300/- gold chain worth Rs.12,000/- and important documents from his house. The learned Magistrate in course of enquiry recorded the statement of complainant on solemn affirmation and other witnesses and finding prima-facie case summoned these petitioners to face the trial.

4. It has been submitted that the father of Opposite Party No.2 had executed a registered sale deed dated 10.09.1974 in favour of the father of petitioner no.1 and his family members. The complainant illegally had started construction of house over the portion of the land in possession of these petitioners. The petitioners raised protest and filed a petition before police which was enquired and police submitted report on 27.06.2011 stating therein that the complainant had started construction work over some of the portion of the land which was purchased by the petitioners in the year 1974. The complainant at the time of enquiry did not produce any paper and on account of highhandedness on the part of the complainant, the police recommended for taking prohibitory step against the complainant. In this regard, a proceeding under Sections 107 and 144 of the Cr.P.C. was also initiated against the complainant Opposite Party No.2. The dispute between the parties is purely a civil dispute. The present case has been filed after the initiation of proceeding under Section 107 and 144 of the Cr.P.C. with oblique motive and so the order taking cognizance in subsequent complaint case is fit to be quashed. The learned counsel for the Opposite Party No.2 as well as learned APP for the State opposed the submissions.

5. On perusal of complaint petition, documents annexed with the petition and also the counter affidavit of the Opposite Party No.2, I find that it has been specifically alleged that on the date of occurrence these petitioners along with police went at the door of complainant and assaulted his labourers by lathi, danda fist and slaps and stopped the construction work. In the said occurrence,



three of his labourers sustained injuries. The injured persons were treated at hospital which finds support from the papers given by the hospital. In course of enquiry, the complainant and his witlessness supported the allegation of assault and snatching of the articles from his house. The learned Magistrate finding prima-facie for the offence in question has rightly taken cognizance. The defence of the petitioners that a land dispute was going on for which a proceeding under Section 107 and 144 of the Cr.P.C. were initiated much earlier to the filing of the complaint case cannot be taken for consideration at this stage.

6. In this view of the matter, I do not find any illegality in the impugned order whereunder the petitioners have been summoned. This application is devoid of merit and is accordingly dismissed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	14.08.2017
Transmission Date	14.08.2017

