

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.45507 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District- PURNIA

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1. Indra Nand Thakur son of Late Kripa Nand Thakur

2. Nikhila Nand Thakur son of Sri Indra Nand Thakur

Both resident of A/1, Magistrate Colony, P.O.-Ashiyana Nagar, P.S.-Rajeev
Nagar, Town & District- Patna -800025 (Bihar).

.... Petitioner/s

Versus

1. The State of Bihar.

2. Gulam Mudassar Kaifi @ Munna son of Late Abdul Latif, resident of village-
Lakshmipur, P.S.- Falka, District -Katihar (Bihar).

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Raju Giri, Advocate

: Mr. Santosh Kumar Mishra, Advocate

For the Opposite Party/s : Mr. Ajit Kumar Singh, Advocate

For the State : Mr. Arvind Kumar Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 17-05-2017

Heard Mr. Raju Giri, learned counsel for the petitioners and
Mr. Ajit Kumar Singh, learned counsel for the complainant.

2. The petitioners have filed this application under Section
482 of the Code of Criminal Procedure (for short 'CrPC') for
quashing the order dated 15.07.2013 passed in Complaint Case
No.2121 of 2011 by the learned Chief Judicial Magistrate, Purnea by
which he has taken cognizance against the petitioners under Sections



147, 341, 323, 427 and 447 of the Indian Penal Code (for short 'the Penal Code') and has summoned them to face trial.

3. The complainant is Bataidar of the land of the petitioners bearing Khata No.439, Plot Nos.1383, 1384 and 1385 measuring an area of three acres twenty two decimals since 1990. The land is situated at Mauza Kajra, P.S.-Mirganj, District- Purnea. It is stated that in November, 2010, the accused Nikhila Nand Thakur asked him to purchase the land at Rs. fifteen lakhs. When the complainant showed his inability, the accused asked him to leave the land and started negotiating with other people. Being left with no option, the complainant filed a title suit bearing Title Suit No.287 of 2010 on 20.11.2010 in the Court of Subordinate Judge, Purnea and sought for declaration that he is Bataidar (under Raiyat) of the suit land.

3. It is stated that the accused persons sold the land to some other persons in connection of which a complaint case bearing Complaint Case No.4002 of 2010 has been filed. The complainant states that he sowed paddy on the said land more than a month back. Thereafter, the accused Mahboob Khan and Md. Wasi Ahmad had called him in the police station and asked him to vacate the land and on failure to do so they had threatened him with dire consequences. It is further stated that on 08.08.2011 the accused Mahboob Khan and Md. Wasi Ahmad along with armed police personnel came to the field



and destroyed the crops of Md. Iliyas while leaving the field they lifted him to the police station and threatened him that if does not vacate the land he would be implicated in other cases. The accused Mahboob Khan took rupees five thousand from him under coercion and threat. It is further stated that on 10.08.2011 at about 6 a.m. while he was in field the accused Md. Wasi Ahmad with armed police personnel and other accused persons came and started assaulting him. They also destroyed the crops. It is stated that they threatened the complainant that if he ever goes to the land he would face dire consequences and would be implicated in cases of dacoity. They also assaulted the witnesses present there. The accused persons also got his entire field cultivated by a tractor causing loss of Rs.15,000/- to him.

4. Mr. Raju Giri, learned counsel for the petitioners submitted that the petitioner no.1 Indra Nand Thakur is eighty years old. He was senior officer of the Bihar Administrative Service and petitioner no.2 is his son, who is a lecturer at a local college in Patna. He contended that both of them reside at Patna. He contended that petitioner no.1 had four sons and was having large chunk of agricultural land at Purnea. In the year 1985, when he was posted at Purnea, due to enmity and local politics, his two sons were killed by the miscreants. Thereafter, the petitioner along with his entire family members moved at Patna and since then they are settled in Patna and



they seldom visited Purnea.

5. He contended that the local people including opposite party no.2 taking advantage of the situation are trying to grab the land of the petitioners. He contended that the opposite party no.2 is a rank outsider and the petitioners never ever given their land on Batai to the opposite party no.2. According to him, the petitioners have absolute right, title and possession over the land in question and petitioner no.2 sold 41.5 decimals of land out of 3.22 acres to one Bhutku Yadav son of late Mohan Yadav vide registered sale deed dated 09.11.2010 and further 2.49 acres of land to one Md. Wasi Ahmad son of late Md. Muslim vide registered sale deed dated 21.02.2011 and since then the purchasers are in peaceful possession of the land.

6. He contended that a title suit bearing Title Suit No.287 of 2010 was filed by opposite party no.2 in the Court of Subordinate Judge, Purnea whereby a declaration was sought that the plaintiff is the Bataidar of the suit land and having acquired the right of occupancy in the land and the defendants cannot evict him from the suit land. The said suit was dismissed for non-prosecution vide order dated 11.05.2011. The opposite party no.2, thereafter, for the same relief has again filed a title suit bearing Title Suit No.228 of 2011 under Order IX Rule 4 of the Code of Civil Procedure. It is contended that the learned Magistrate without realizing the fact that the dispute is



purely civil in nature, mechanically took cognizance of the offences and summoned the petitioners merely on the basis of the allegations made in the complaint with looking into the statement of the complainant taken on oath as also of some witnesses examined in course of enquiry under Section 202 of the CrPC. He contended that all the witnesses examined in course of enquiry under Section 202 of the CrPC are relatives of the complainant and they have made contradictory self defeating statement. He contended that even otherwise no specific allegation has been made against the petitioners in the entire complaint and, hence, the impugned summoning order passed against them is apparently bad in law.

7. Per contra, Mr. Ajit Kumar Singh, learned counsel appearing on behalf of opposite party no.2 submitted that the petitioners are named in the complaint and there is allegation against them that they also came together with eleven other persons on 10.08.2011 at 6 a.m. in the field when the complainant was present and they all assaulted him with fists and slaps and damaged the crops worth Rs.15,000/-. He contended that the complainant has supported the allegation made in the complaint in his statement made on oath and apart from the complainant four other witnesses, who were examined in course of enquiry have fully supported the allegation made against them and, hence, no illegality can be found with the



impugned order whereby the petitioners have been summoned to face trial.

8. I have heard learned counsel for the parties and perused the record.

9. On perusal of the record and the statement of the complainant made on oath I find that the complainant has not supported the allegation of assault made by the accused persons including the petitioners in the field on 10.08.2011. Further, on the perusal of the statements made by the deposition witness nos.1 to 3, namely, Md.Ashfque, Sk. Suleman and Md. Sikander, I find that they have not even mentioned the name of these two petitioners at any place in their statement. They have also not given any particular of the occurrence. Their statement is absolutely vague and does not make out any offence as against the petitioners.

10. Taking into consideration the statement of the enquiry witnesses, I am shocked as to how the learned Chief Judicial Magistrate could have summoned the petitioners to face trial for the offences punishable under Sections 147, 341, 323, 427 and 447 of the Penal Code in absence of there being any material against them. I am of the opinion that the impugned order has been passed by the learned Magistrate mechanically without application of judicial mind. Thus, allowing such a frivolous prosecution to continue would be a gross



abuse of the process of the court.

11. Accordingly, the impugned order dated 15.07.2013 passed by the learned Chief Judicial Magistrate, Purnea in Complaint Case No.2121 of 2011 so far as the petitioners are concerned, is hereby quashed.

12. The application stands allowed to the extent indicated above.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	20.05.2017
Transmission Date	20.05.2017

