

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.34282 of 2012

Arising Out of PS.Case No. -982 Year- 2008 Thana -Saraiya District- MUZAFFARPUR

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1. Devendra Nath Singh Son of Late Fakirchand Singh Resident of Village - Jalalpur Dayal, Police Station - Saraiya, District - Muzaffarpur.
 2. Arun Prakash Son of Devendra Nath Singh Resident of Village - Jalalpur Dayal, Police Station - Saraiya, District - Muzaffarpur.
 3. Barun Prakash alias Munna Singh Son of Devendra Nath Singh Resident of Village - Jalalpur Dayal, Police Station - Saraiya, District - Muzaffarpur.
 4. Chandeshwar Rai Son of Late Bhonu Rai Resident of Village - Neura Gopalpur, Tola Sera, Police Station - Saraiya, District - Muzaffarpur.
 5. Chandan Rai Son of Chandeshwar Rai Resident of Village - Neura Gopalpur, Tola Sera, Police Station - Saraiya, District - Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Ritesh Kumar Singh alias Jhunna Singh Son of Late Sribhagwan Singh Resident of Village - Jalalpur Dayal, Police Station - Saraiya, District - Muzaffarpur.

.... Opposite Party/s

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Appearance :

For the Petitioners : Mr. Shailendra Kumar Singh
For the State : Mr. Rajendra Singh Sashtri, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 10-05-2017

Heard Mr. Shailendra Kumar Singh, the counsel for the petitioners and Mr. Rajendra Singh Sashtri, APP for the State.

2. The petitioners seek quashing of the order dated 21.01.2012 passed by the learned Judicial Magistrate, 1st Class, Muzaffarpur, in Complaint Case No. 982 of 2008. The learned Magistrate, in course of inquiry, recorded statement of the complainant and other witnesses and finding *prima facie* case for the offence under Sections 323, 341, 504 and 384 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 S.D.J.M, Muzaffarpur West, alleging therein that he lives outside his village in connection with his livelihood and when he came at his village got information that the petitioner nos. 4 and 5 forcibly took possession over his land measuring 30 decimals of Khesra no. 1403, Khata no. 52. They were found constructing house over some of the portion of the said land and on query they disclosed that they had purchased the land from petitioner no. 1. In this regard, the complainant convened a Panchayat and in the said Panchayat, the petitioners promised not to make any construction over the land. The petitioners in spite of their assurance again started, constructing the house and on protest they assaulted and obtained thumb impression of the complainant on some papers and also snatched gold chain and cash amount of Rs. 5,000/-.

4. The learned counsel for the petitioners submits that the petitioner nos. 1 to 3 and O.P. No. 2 (complainant) are agnates and a civil litigation is going on for partition of their ancestral property. The land was partitioned orally among the descendants of Fakir Chand Singh, Pancham and Yogendra Singh and as per mutual partition, a Korra was prepared in which the land allotted to Bhagwan Singh was shown in Schedule-I and the land allotted to petitioner no.



1 was shown in Schedule-II. The land allotted to Baleshwar Prasad Singh and Ratnesh Kumar were shown in Schedule-III and IV. The land allotted to other co-sharer is mentioned in Schedule-V and VI. The petitioner no. 1 sold some land out of the land allotted in his share. The petitioner no. 1 has filed a Title Suit No. 199 of 2007 against his co-sharer. In pleading, the present complainant has been impleaded as defendant no. 3 in the said suit. Besides the aforesaid Civil Suit, the complainant has filed a case vide Case No. 2002 of 2008 against the petitioner nos. 1 and 4 with respect to 72 decimals land of aforesaid Khesra No. 1403 whereunder a proceeding under Section 144 of Cr.P.C. was initiated. The said proceeding was finally dropped, in view of pendency of Title Suit No. 199 of 2007 between the parties. The allegation of snatching gold chain, taking 5,000/- Rs. and obtaining thumb impression on blank paper has been made only to make the offence grave. He further submits that the occurrence took place on 15.06.2008, but the cognizance has been taken after 3 years and 7 months and so it is barred by limitation under Section 468(2)(C) of the Cr.P.C. There are contradictions in the statement of complainant and witnesses on the point of obtaining thumb impression, snatching chain and cash amount and no offence is made out.

5. Learned APP, on the other hand, opposed the submissions.



6. On perusal of the complaint petition and the documents on record, it appears that the complainant and petitioner nos. 1 to 3 are descendants of common ancestor. The complainant has alleged that occurrence took place on 15.06.2008 and 26.06.2008. A copy of Title Suit No. 199 of 2007 which is annexure-2 of the application shows that the petitioner no. 1 filed a suit against the complainant and other co-sharer for declaration of his right, title and interest over the land which was allotted to him in oral partition. The land which is being claimed by the complainant has been shown in the share of the petitioners. The complainant has also stated that the petitioners have executed some documents with respect to the said land and further admitted the pendency of the Civil Suit between the parties. From perusal of the statement of complainant and other witnesses which are available with the Lower Court record, it appears that there are contradictions also in the statement of complainant and his witnesses. The witnesses have stated that the present case has been lodged on account of land dispute.

7. In view of the discussions made above, I find that the order taking cognizance has been passed in mechanical manner. The continuance of criminal proceeding would amount to misuse of process of Court. The order dated 21.01.2012 passed by the learned Judicial Magistrate, 1st Class, Muzaffarpur, in Complaint Case No.



982 of 2008 is not sustainable in face of pendency of Civil Suit between the parties. The impugned order is, accordingly, set aside and this application is allowed.

(Sanjay Kumar, J)

rohit/-

AFR/NAFR	NAFR
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