

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.33319 of 2011

Arising Out of Complaint Case No. -471C Year- 2009 District- SASARAM (ROHTAS)

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1. Mohammad Shamim, son of Mahammad Mansuri, Village- Harihar Gaj, P.S Nasariganj, District- Rohtas
 2. Mahmud Mansuri, son of Late Kalut Mansuri Village- Harihar Gaj, P.S Nasariganj, District- Rohtas
 3. Babul Mansuri @ Md. Babul @ Bablu, son of Mahmud Mansuri, Village- Harihar Gaj, P.S Nasariganj, District- Rohtas

.... Petitioners

Versus

1. The State of Bihar
2. Abdul Aziz Quraishi, resident of Hariharganj, P.S. Narsariganj, District- Rohtas

.... Opposite Parties

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Appearance:

For the Petitioners	: Mr. Ravi Shankar Sahay, Mr. Vikash Sinha Mr. Navin Kumar Jha, Advocates.
For the OP No. 2	: Mr. Rajani Kant Lal, Advocate.
For the State	: Mr. Rajendra Prasad Nat, APP

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 24-04-2017

Heard learned counsel for the petitioners, learned counsel for the opposite party no. 2 and learned APP for the State.

2. The present petition has been filed for quashing the order dated 27.07.2011 passed by the Judicial Magistrate 2nd Class, Bikaramganj taking cognizance against the petitioners in Complaint Case No. 471C of 2009, Trial No. 103 of 2010 for the offences under Sections 323, 379, 427/34 of the Indian Penal Code.

3. According to the prosecution case, the accused persons entered upon the land of the petitioners vide Khata No. 1526, Plot No.



3311/4216 measuring about 9 decimals situated in Mauza Nasariganj, cut and carried away three *Sisam* and two *Siris* trees thereby causing loss of about Rs. 15,000/- to the complainant. On making protest, the complainant and his son were assaulted with *lathi, danda*.

4. Learned counsel for the petitioners submits that the accusations in the complaint are completely baseless and frivolous. The complainant is encroacher as the land in question belongs to the State of Bihar as decided in Title Suit No. 31 of 1995 wherein, inter alia, the complainant was directed to remove the encroachment. Title Appeal No. 55 of 2004 preferred by him against the judgment in the said Title Suit No. 31 of 1995 was also dismissed and the matter attained finality.

5. Learned counsel for the opposite party no. 2 appears and has been heard. No counter affidavit has been filed controverting the statements made on behalf of the petitioners.

6. Having heard learned counsel for the petitioners, learned APP and opposite party no. 2, this Court finds merit in the petition. It is not in dispute that the complainant was an encroacher upon the Government land and he did not succeed in his claim in Title Suit No. 31 of 1995 nor Title Appeal No. 55 of 2004 and thus the matter attained finality. In such circumstances, the question of theft of the trees in question by the petitioners alleged to have been committed from the complainant's land cannot arise. The accusation with regard to assault with lathi, danda by the petitioners appears equally frivolous



and baseless.

7. This Court is therefore of the view that continuance of the criminal prosecution against the petitioners would amount to abuse of process of court and accordingly the impugned order dated 27.07.2011 passed by the Judicial Magistrate 2nd Class, Bikramganj taking cognizance in Complaint Case No. 471C of 2009, Trial No. 103 of 2010 is hereby quashed and the petition stands allowed.

(Vikash Jain, J)

Md. Ibrarul/BT

AFR/NAFR	NAFR
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