

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.32849 of 2013

Arising Out of Complaint Case No. -896 Year- 2011 Thana -DARBHANGA COMPLAINT CASE
District- DARBHANGA

- =====
1. Shakila Khatoon, wife of Wali Mohammad
 2. Mohammad Barkat Ali, son of Wali Mohammad
 3. Mohammad Babar Ali, son of Wali Mohammad
- All are resident of village- Lauam, P.S.- Sadar, District- Darbhanga

.... Petitioners

Versus

1. The State of Bihar
2. Deen Mohammad, son of Fazlur Rahman, resident of village- Lauam, P.S.- Sadar, District- Darbhanga

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. N.K. Prasad, Advocate.
For the State : Mr. Jharkhandi Upadhyay, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 09-01-2017

Heard learned counsel for the petitioners and the State.

The Petitioners seeks quashing the order dated 6.4.2013 passed by the Adhoc Additional Sessions Judge-III, Darbhanga, in Cr. Revision Case No. 26 of 2012 by which he has set aside the order dated 16.11.2011 passed by the learned Magistrate, 1st Class, Darbhanga, by which he has dismissed the complaint case filed by the complainant for the offence under Sections 448, 323, 341, 452, 380, 504 and 427 of the Indian Penal Code on the ground that the dispute between the parties is purely civil in nature.

None appeared on behalf of the opposite party No. 2



despite valid service of notice.

It has been submitted by the petitioners that both the parties are brothers and the instant case has been filed out of land dispute between them which is apparent from the complaint petition itself. The enquiry witness has stated before the court that both the parties are brothers and the accused persons wants to take forcible possession of house of the complainant.

From perusal of the copy of the deposition of three enquiry witnesses recorded during enquiry annexed as Annexure-2 series, it appears that the witnesses have stated to a court's question that there is dispute between the parties for possession of the house and both the parties are brothers.

The learned Magistrate after appreciating the statement of witnesses, dismissed the complaint petition under Section 203 Cr. P.C. on the ground that the dispute between the parties is civil dispute. The learned Additional Sessions Judge, Darbhanga, has set aside the aforesaid order vide order dated 6.4.2013. The learned Additional Sessions Judge, Darbhanga, has not given any cogent and valid reason for differing with the finding given by the learned Magistrate in the order dated 16.11.2011. He has merely stated in the order that from perusal of the statement of witnesses, the valid case is made out and accordingly, the same was set aside.



From perusal of the order of the learned Additional Sessions Judge, Darbhanga, dated 6.4.2013, this Court is not satisfied with the reason given by the learned Additional Sessions Judge, Darbhanga, for setting aside the order of learned Magistrate dated 16.11.2011. This Court finds that the learned Additional Sessions Judge, Darbhanga, has not discussed the statement of witnesses recorded in enquiry. The nature of dispute between the parties was civil dispute and, hence, this Court finds that the impugned order dated 6.4.2013 passed by the Additional Sessions Judge, Darbhanga, suffers from illegality.

Accordingly, the application is allowed and the Proceedings including the order dated 6.4.2013 passed by the Adhoc Additional Sessions Judge-III, Darbhanga, in Cr. Revision Case No. 26 of 2012, is hereby, quashed.

The application stands allowed.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	21.01.2017
Transmission Date	21.01.2017

