

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.36475 of 2014

Arising Out of PS.Case No. -1117 Year- 2013 Thana -BUXAR COMPLAINT CASE District-
BUXAR

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1. Lal Bahadur Prasad S/o Late Shiv Pujan Kumar
 2. Manoj Kumar Prasad S/o Lal Bahadur Prasad
 3. Md. Mustak Ansari @ Mustaque Ansari S/o Israyal Ansari
 4. Rajendra Prasad S/o Late Ganesh Kumhar All Resident of Village Rampur, P.S. Nawanagar, District Buxar.
 5. Dewanti Devi W/o Dhruv Narayan Tiwary Resident of Village Baijnathpur, P.S. Nawanagar, District Buxar.
 6. Akhilesh Kumar Pandey @ Akhileshwar Pandey S/o Late Tej Narayan Pandey
 7. Mahendra yadav @ Mahendra Singh Yadav S/o Late Muni Yadav
 8. Najiban Bibi W/o Ahmad Mian
 9. Hari Shankar Singh S/o Late Ram Prit Mahto
 10. Markat Sah S/o Late Budha Kanu All Resident of Village Rampur, P.S. Nawanagar, District Buxar.
 11. Jyoti Devi W/o Anil Prasad
 12. Lalmuni Devi W/o Ramashish Prasad
 13. Kamla Devi W/o Chandradeo Dubey All Resident of Village Dasiyaon, P.S. Nawanagar, District Buxar.
 14. Chandra Bhushan Dubey S/o Harishanker Dubey Resident of Village Raghunathpur, P.S. Nawanagar, District Buxar.
 15. Phool Kumari Devi W/o Birendra Singh Resident of Village Baijnathpur, P.S. Nawanagar, District Buxar.
 16. Dharmsheela Devi W/o Birendra Tiwary Resident of Village Sidhipur, P.S. Nawanagar, District Buxar.
 17. Rajnath paswan S/o Late Shiv Lakhan Paswan Resident of Village Kulmanpur, P.S. Nawanagar, District Buxar.
 18. Ram Bihari Ram S/o Ramdhari Ram Resident of Village Shivpur, P.S. Nawanagar, District Buxar.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Tikadhari Prasad S/o Late Shivpujan Kumar Resident of Village Rampur, P.S. Nawanagar, District Buxar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Mishra, Advocate
For the Opposite Party/s : Mr. Shivendra Kumar Sinha, Advocate
: Mr. Ranjeet Patel, Advocate

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL ORDER

5 09-10-2017 This quashing application under Section 482 Cr.P.C.



has been filed for quashing the order dated 28.05.2014 passed in Complaint Case No. 1117(C) of 2013/2154 Tr. 14 by Sri S.K. Chaubey, Judicial Magistrate, 1st Class, Buxar by which he has taken cognizance under Section 465/120B of the Indian Penal Code.

2. Briefly stated, the facts of the case is that a complaint case was filed by opposite party No. 2 against the petitioners alleging therein that Late Shivpujan Kumar had three sons. After death of Shivpujan Kumar, his three sons came in possession of his property. Ram Chandra Prasad died unmarried, as such, property of Shivpujan Kumar came in possession of petitioner No. 1 and opposite party No. 2 half and half.

3. It has further been alleged that Sarpanch and Upsarpanch of Gram Kuchhary Rampur on the basis of a forged gift and compromise deed prepared by panches by an order declared that the share of Ram Chandra Prasad will go to the petitioner No. 1. Thereafter petitioner No. 1 got the land mutated in his name in the Circle Office against which an appeal has been filed by the opposite party No. 2 before D.C.L.R., Dumrao.

4. The complainant was examined on S.A. and two witnesses were examined on his behalf in course of inquiry and on the basis of inquiry the learned court below took cognizance



of the offence under Section 465/120B of the Indian Penal Code and summoned petitioners to face trial.

5. The petitioner No. 1 and the opposite party No. 2 are own brothers. Petitioner No. 2 is the son of petitioner No. 1. During life time of their father, there was partition in the family and petitioner No. 1 and deceased brother Ram Chandra Prasad and their father lived together and Mutation Case No. 1575 of 2003 was filed by all three brothers and vide order dated 21.04.2003 passed by Circle Officer, Nawanagar, Buxar, 1.24 acres of land was divided between the three brothers having share of 41 decimals each. Opposite Party No. 2 had sold his share of 41 decimals of land to one Badri Singh and rest 83 decimals of land was mutated in the name of petitioner No. 1 and Ram Chandra Prasad. On 24.08.2007, an application was filed by Ram Chandra Prasad before the Gram Kachhary, Rampur intending to gift his movable property and immovable property to his brother Lal Bahadur Prasad (petitioner No.1). Thereafter statement of Ram Chandra Prasad was recorded in the Gram Kachhary, Rampur, whereafter, vide order dated 31.08.2007, Sarpanch ordered that the entire movable and immovable property of Ram Chandra Prasad became the property of Lal Bahadur Prasad. Lal Bahadur Prasad was directed to take care of



Ram Chandra Prasad for his whole life. Ram Chandra Prasad died on 04.06.2009. His last rites were performed by petitioner No1. In the year 2011, a complaint was lodged by opposite party No. 2 in the Gram Kachhary, Rampur in which all the parties had appeared before Gram Kachhary on 08.07.2011. Opposite party No. 2 deposed that he has no interest in the share of Ram Chandra Prasad as Ram Chandra Prasad resided with petitioner No. 1 and his last rites were also performed by petitioner No. 1. Thereafter a Panchayati was held on 15.11.2012 by which 2/3rd share was allotted to petitioner No. 1 and 1/3rd share was allotted to opposite party No. 2 and accordingly the lands were mutated.

6. From the pleadings in the complaint no criminal offence is made out. No ingredients in order to constitute offence under Section 465 is made out. There could only be a civil remedy for such disputes. All settlement within the family was done by way of compromise and consent.

7. If opposite party No. 2 has any claim or he is not satisfied with the Award of panches he could have filed a suit for his share in the property but no criminal offence is made out. He has made Sarpanch, Upsarpanch and other panches accused in the complaint case and cognizance has also been taken against all.



8. After considering the facts and circumstances of the present case, this Court finds that no criminal offence is made out against any of the petitioners and continuing of present complaint case would amount to an abuse of the process of Court and, as such, for the ends of justice and in view of the fact that the dispute appears to be of civil nature, the order dated 28.05.2014 passed in Complaint Case No. 1117 (C) of 2013 as well as entire proceedings arising out of said complaint case is quashed.

9. The application stands allowed.

(S. Kumar, J)

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