

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.2661 of 2015

Arising Out of PS.Case No. -477 Year- 2014 Thana -BHAGALPUR COMPLAINT CASE District-
BHAGALPUR

- =====
1. Om Prakash Pandey S/O Late Surendra Prasad Pandey Resident of vill-Phulwaria,P.S-Jagdishpur,Distt.-Bhagalpur
 2. Prem Lata Pandey Wife of Om Prakash Pandey Resident of vill-Phulwaria,P.S-Jagdishpur,Distt.-Bhagalpur
 3. Navneet Kumar Pandey@Navneet Pandey Son of Om Prakash Pandey Resident of vill-Phulwaria,P.S-Jagdishpur,Distt.-Bhagalpur
 4. Sunil Kumar Tiwary@Sunil Tiwary Son of Bipin Tiwary Resident of vill-Chandpur,P.S-Jagdishpur,Distt.-Bhagalpur,at present Laloo Chak Angari,P.S-Lodipur,Distt.-Bhagalpur
 5. Samodanand Tiwary S/O Sitanath Tiwary Resident of vill-Bishambhar chak,P.S-Amarpur,Distt.-Banka
 6. Suresh Mandal Son of Sukhri Mandal Resident of vill-Phulwaria,P.S-Jagdishpur,Distt.-Bhagalpur

.... Petitioners

Versus

1. The State of Bihar
2. Satya Prakash Pandey S/O Late Surendra Prasad Pandey Resident of vill-Phulwaria,P.S-Jagdishpur,Distt.-Bhagalpur

.... Opposite Party

with

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Criminal Miscellaneous No. 31376 of 2015

Arising Out of PS.Case No. -477 Year- 2014 Thana -BHAGALPUR COMPLAINT CASE District-
BHAGALPUR

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Munna Singh Son of Baleshwar Singh resident of Sai International Hotel, Station Chowk, Bhagalpur, P.S. - Bhagalpr, District - Bhagalpur.

.... Petitioner

Versus

1. The State of Bihar.
2. Satya Prakash Pandey Son of Late Surendra Prasad Pandey resident of Village - Phulwaria, P.S. - Jagdishpur, District - Bhagalpur.

.... Opposite Party

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Appearance :

(In Cr.Misc. No.2661 of 2015)

For the Petitioners : Mr. Saket Tiwary

For the State : Mr. Abhay Kumar, APP

(In Cr.Misc. No.31376 of 2015)

For the Petitioner : Mr. Saket Tiwary



For the State : Mr. Abhay Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 14-11-2017

Both Cr. Misc. No. 2661 of 2015 and Cr. Misc. No. 31376 of 2015 are being disposed of by this common judgment as the same impugned order passed in Complaint Case No. 477 of 2014 is under challenge in both the cases.

2. Heard learned Counsel for the petitioners and the learned Counsel for the State. None appeared on behalf of Opposite party No. 2 despite receiving the notice issued by this Court.

3. The petitioners seek quashing of the cognizance order dated 9.6.2014 passed by the Judicial Magistrate, 1st Class, Bhagalpur in Complaint Case No. 477 of 2014, thereby taking cognizance of the offence under Sections 427, 385, 504, 323, 379 and 34 of the IPC.

4. The brief fact giving rise to the case is that on 20.2.2014 while the complainant had gone for consultation with doctor the villagers informed him on mobile that accused persons were cutting the trees from his ancestral orchard, so he informed the police, but the police did not take any action; so he went over the orchard and protested. Munna Singh, one of the accused put pistol by the side of his head and threatened him. In the meanwhile other accused persons came out of the vehicle and asked the complainant to leave the place. It is alleged that the complainant has incurred a loss of approximately Five Lakhs by cutting of the trees. He also informed the matter to the Superintendent of Police and others but no



action was taken, so filed the complaint.

5. Learned Counsel appearing on behalf of the petitioners submits that the petitioner Om Prakash Pandey of Cr. Misc. No. 2661 of 2015 is the full brother of the complainant and rest others are his wife, son, relatives and friends. The complainant himself admits that the trees were cut from the ancestral orchard, means the petitioner Om Prakash Pandey has got share in the same; so even assuming that the trees were cut from the joint orchard by the petitioners no prima facie offence of theft is made out. In fact, the complainant is in habit of lodging frivolous and false cases against his own brother, one of the petitioners, due to property dispute. Earlier also he filed Complaint Case No. 325 of 2007 levelling similar kind of allegations and the criminal proceeding of that complaint case was quashed by this Court by orders passed in Cr. Misc. No. 29205 of 2011. During pendency of the aforesaid complaint case the complainant filed Partition Suit No. 401 of 2014, the same is still subjudiced before the Court of Sub Judge, Bhagalpur; so the present complaint filed with similar allegation is malicious in nature.

6. Learned Counsel appearing on behalf of the State submits that at least the case of mischief is made out.

7. Having considered the rival submissions and on perusal of the record, the Court finds that the allegation itself is explicit that trees were alleged to be cut from the ancestral orchard of the complainant which means the said orchard is in jointness of all co-sharers, including the complainant and his brothers petitioner No. 1 of Cr. Misc. No. 2661 of



2015. This is also evident from the fact that already Partition Suit No. 401 of 2014 is subjudiced between them showing that partition has not been effect between all co-sharers by metes and bounds; so the dispute primarily appears property dispute which is civil in nature. It is also apparent from the submissions and the copy of the order vide Cr. Misc. No. 29205 of 2011 and with similar allegations earlier a complaint filed against the petitioner Nos. 1 and 2 was quashed. The present complaint also in the backdrop of these facts is a malicious complaint in order to wreak personal vengeance and to settle the civil dispute by taking recourse of criminal prosecution.

8. So entire criminal proceeding of Complaint Case No. 477 of 2014 inclusive of the impugned cognizance order dated 9.6.2014 passed in Complaint Case No. 477 of 2014 by the Judicial Magistrate, 1st Class, Bhagalpur is hereby quashed.

9. Thus both the applications stand allowed.

(Arun Kumar, J.)

Snkumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	16.11.2017
Transmission Date	16.11.2017

