

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.10863 of 2014**

Arising Out of PS.Case No. -2424 Year- 2012 Thana -WEST CHAMPARAN COMPLAINT  
District- WESTCHAMPARAN(BETTIAH)

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1. Ghanshyam Tiwari Son of Shriniwas Tiwari  
2. Pradeep Tiwari @ Pradeep Kr. Tiwari Son of Bashishth Tiwari  
3. Navin Tiwari Son of Shatrughan Tiwari  
4. Shatrughan Tiwari Son of Late Ramji Tiwari  
5. Lal Saheb Tiwari Son of Srinivas Tiwari  
6. Amod Tiwari Son of Srinivas Tiwari  
all residents of Village - Gonauli, P.S. - Lauriya, District - West Champaran  
7. Satyanarayan Tiwari, S/o Late Ramlakhan Mishra R/o Kes Ram P.S. Udani,  
District-Muzaffarpur at Assistant Sub-Inspector, Lauriya, P.S. - Diststrict - West  
Champaran,

.... .... Petitioner/s

Versus

1. The State of Bihar  
2. Bikrama Sah Son of Late Gulten Sah Resident of Village - Gonauli, P.S. -  
Lauriya, District - West Champaran

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Umesh Chandra Verma

For the Opposite Party/s : Mr. Amrendra Pd. APP

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**CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR**

**ORAL JUDGMENT**

**Date: 18-07-2017**

Heard both sides.

2. This is an application under Section 482 of the Cr.P.C. for quashing the order dated 18.04.2013 passed by Sri Ashutosh Rai, Judicial Magistrate, 1<sup>st</sup> Class, Bettiah, West Champaran in Trial no. 2341 of 2013 arising out of Complaint Case no. 2424-C of 2012 whereunder the petitioners along with three others were summoned to face the trial for the offence under Sections 147, 427, 379 and 504 of the IPC.



3. The facts, in brief, is that the O.P. no. 2 filed a complaint case on the file of C.J.M. Bettiah, West Champaran, alleging *inter alia* that on 24.10.2012 at about 05:00 P.M. when he along with his family members was at his house, all the petitioners along with few others came at his door on tractor and jeep and asked the O.P. no. 2 to leave the house and land in favour of Shriniwas Tiwary and his family members. The O.P. no. 2 refused to do so as he along with his family members were residing in the house since the time of their ancestor. Thereafter, on the order of the then Circle Officer, all the petitioners and co-accuseds looted away two pumps sets, fodder cutting machine, cultivator, two wooden beams, and four bags of mustard and also demolished his house. The matter was inquired under Section 202 of the Cr.P.C. and the court below finding *prima facie* case, took cognizance of offence as stated above. The cognizance order was challenged by filing Criminal Revision no. 147 of 2013 which after hearing both sides, was dismissed. The petitioners have prayed to set aside the said order taking cognizance.

4. The learned counsel for the petitioners submits that as a matter of fact, on 24.12.2012 the informant and his family members armed with deadly weapons came at the door of the petitioners with a tractor laden with different articles and kept the tractor, tailor and other articles in front of the house of the petitioners. They entered into the



house of the petitioners and assaulted them in respect of which co-accused Nagendra Tiwari lodged Loriya P.S. Case no. 173 of 2012 under Sections 147, 148, 149, 341, 323, 324, 325, 307, 448, 384, 386 and 380 of the I.P.C. In the said occurrence, as many as five persons sustained injuries. The learned counsel referred Annexures-4 and 5 of this application to show that there is bona fide land dispute between the parties. The Sub-Divisional Judicial Magistrate in order to maintain law and order had deputed Block Development Officer to visit at the place of occurrence for maintaining peace. The D.C.L.R. in Case no. 54/12-13 has declared title and interest of Shriniwas Tiwari (one of the co-accused). So in view of civil dispute between the parties, the criminal prosecution of these petitioners is bad and not sustainable in law.

5. The learned counsel for the O.P. no. 2 as well as A.P.P. opposed the prayer. They would submit that the house standing over the land in question was coming in possession of the O.P. no. 2 and his family members since the time of their ancestor and so they had right to possess the same unless evicted through the process of the court. The petitioners had taken law and forcibly remove the household articles of O.P. no. 2 for which the court below has rightly taken cognizance of offence.

6. On perusal of complaint petition as well as annexures available



on record, I find that the complainant O.P. no. 2 has asserted that he along with his family members was residing in the house standing over the land in dispute. The complainant in his S.A. and witnesses examined on his behalf have stated that on the date of occurrence, all these petitioners armed with deadly weapon came at his door. They assaulted the complainant and his family members and also took away his household articles. The learned Magistrate after going through the evidence recorded during inquiry, found *prima facie* case for the offence and summoned the petitioners to face the trial. The learned Sessions Judge while dismissing the revision of these petitioners has also examined the materials on record. The petitioners will have opportunity to put his defence set out in the counter case at the time of trial.

7. In view of the discussions made above, I do not find any merit in the Cr. Misc. application. Accordingly, this Cr. Misc. application is dismissed.

(Sanjay Kumar, J)

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