

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.23907 of 2014

Arising Out of PS.Case No. -855 Year- 2013 Thana -ROHTAS COMPLAINT CASE District-
SASARAM (ROHTAS)

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1. Surya Narain Singh son of Late Bibhuti Singh
 2. Rajendra Prasad Singh @ Rajendra Singh, S/o Sri Surya Narain Singh
 3. Harendra Prasad Singh @ Harendra Singh, S/o Sri Surya Narain Singh
 4. Ramesh Kumar @ Ramesh Singh S/o Sri Jitendra Singh
 5. Jitendra Prasad Singh @ Jitendra Singh @ Bharat Singh son of Sri Ram Kawal Singh
 6. Jagdish Singh son of Sri Ram Kawal Singh
 7. Narendra Prasad Singh @ Narendra Singh @ Bhola Singh son of Sri Ram Kawal Singh
 8. Niraj Kumar Singh son of Sri Bindeshwari Singh All are resident of village - Agarer Khurd, Khadra Tola, P.O. Agarer Kala, P.S. Suryapura, Distt. - Rohtas
 9. Kamlesh Singh @ Kamlesh Kumar Singh S/o Sri Chandra Shekhar Singh R/o village - Sarna, P.O. Bhalunidham, P.S. Dinara, Distt. - Rohtas

.... Petitioner/s

Versus

1. The State of Bihar
2. Ambika Singh son of Late Banshropan Singh resident of vill. - Agarer Khurd, Khadra Tola, P.O. Agarer Kala, P.S. Suryapura, Distt. - Rohtas

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rajni Kant Singh
For the Opposite Party/s : Mr. Rakesh Kumar Srivastava
For the State : Mr. Humayu Ahmad Khan

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 03-07-2017

1. The petitioners seek quashing of the order dated 28.04.2014 passed by Sri. Ved Prakash Modi, learned judicial Magistrate, 1st Class, Bikramganj Rohtas in Complaint Case No. 855 of 2013. The learned Magistrate finding *prima facie* case for the offence under Sections 323, 379/34 of the IPC, ordered for issuance of summons.
2. Heard both sides.
3. The facts, in brief, is that the O.P. no. 2 filed a complaint case



on the file of S.D.J.M., Bikramganj, Rohtas alleging *inter alia* that on 16.12.2013 at about 11:00 AM, these petitioners armed with deadly weapons went over his land and uprooted potato crop from two katha lands. They also resorted to firing and took away paddy and other articles from his house. After inquiry, the learned Magistrate found prima facie case for the offence as stated above and ordered for issuance of summons.

4. The learned counsel for the petitioners submits that the petitioner no. 1 purchased a piece of land measuring 13.33 decimals of plot no. 662 by virtue of registered sale deed no. 1875 dated 24.03.2012 from Bharat Singh who is full brother of the complainant and came in possession over the said land. The others petitioners are family members of the petitioner no. 1. After execution of the sale deed in favour of the petitioner no. 1, the wife of the complainant filed a Pre-emption case no. 01/12-13 in the court of DCLR, Bikramganj, claiming to be adjoining *raiyyat* of the land of the petitioner. The said pre-emption case was decided against the wife of the complainant. Thereafter, the complainant and his family members in order to dispossess the petitioners from the land committed overt act. They went over the land of the petitioners on 09.12.2013 and forcibly cut paddy crop and on the protest of the petitioners, they abused and brutally assaulted the petitioners. The petitioner no. 3 filed a Complaint Case no. 856 of 2013 against the present complainant and



his three sons. The complainant having come to know about the filing of the case by the petitioners has filed the present complaint with false and frivolous allegations. The dispute between the parties is purely a civil dispute. The allegation of assault has been cooked up only to make out a case grave. The prosecution of the petitioners would amount to abuse of the process of the Court and so the same is fit to be quashed.

5. The learned counsel for the petitioner no. 2 as well as APP opposed the submissions made on behalf of the petitioners. It was submitted that in course of inquiry the complainant and his witnesses had supported the allegation of assault and overt act and so they have rightly been summoned.

6. On perusal of annexures enclosed with the miscellaneous application, I find that the petitioner no. 1 has purchased a land measuring 13:33 decimals land by virtue of registered sale deed dated 24.03.2012 from the full brother of the complainant. The petitioner claims that he immediately got possession and started cultivating. The wife of the complainant filed a Pre-emption Case No. 01/12-13 which after hearing was dismissed by the DCLR, Bikramganj as per order dated 20.12.2012. It further appears that after dismissal of pre-emption case, the complainant filed a Complaint Case no. 855 of 2013 alleging that the petitioners on 16.12.2013 forcibly uprooted potato from his land. The complainant has not mentioned the details of land.



The petitioner, on the other hand, has filed a complaint case no. 856 of 2013 alleging that the complainant and his sons went over his land on 09.12.2013 and forcibly cut paddy crop from the land which was acquired by the petitioner. The dispute between the parties appears purely a civil dispute and the allegation of uprooting potato has been cooked up maliciously. The complainant had no right to go over the land of the petitioner as the pre-emption case admittedly was decided against him. It is not the case of the complainant (O.P. no. 2) that they have challenged the said order by filing any appeal before the appellant authority.

7. In view of the discussions made above, I am of the view that dispute between the parties is purely a civil dispute and criminal prosecution of the petitioners would amount to abuse of the process of the Court. The order dated 28.04.2014 is, accordingly, quashed and this criminal miscellaneous application is allowed.

(Sanjay Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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