

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.5701 of 2014

Arising out of P.S. Case No.174 Year 2012 Thana PATNA COMPLAINT CASE District PATNA

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1. Kamal Narayan Singh, Son of Late Banbari Singh, Resident of Village Bara, P.S. Naubatpur, District Patna
 2. Madheshwar Singh @ Madheshwar Narayan, Son of Kamal Narayan Singh, Resident of Village Bara, P.S. Naubatpur, District-Patna
 3. Chhotan Singh, Son of Kamal Narayan Singh, Resident of Village Bara, P.S. Naubatpur, District Patna
 4. Rupak Sharma, Son of Madheshwar Singh, Resident of Village Bara, P.S. Naubatpur, District Patna

.... Petitioners

Versus

1. The State of Bihar
2. Prabhu Dayal Singh, Son of Late Nanhak Singh, Resident of Village Kardaha, P.S. Naubatpur, District Patna

.... Opposite Parties

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Appearance :

For the Petitioners	:	Mr. Niraj Kumar, Advocate
For the State	:	Mr. B.N. Pandey, APP
For O.P. No.2	:	Mr. Bam Bahadur Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 21-07-2017

Heard learned counsel for the parties.

2. At the very outset, learned counsel for the petitioners submits that petitioner no.1 is already dead, so application is not moved on his behalf. The quashing petition survives only with respect to rest petitioners.

3. This application has been filed by the petitioners under Section 482 Cr.P.C. challenging order dated 28.11.2012, passed by learned Judicial Magistrate, 1st Class, Danapur in Complaint Case No.174 (C) of 2012 whereby he has taken cognizance of the offence under Section 379 of IPC.



4. The complainant's case in brief is that he purchased the land of Khata No.48, Plot No.198, area $57\frac{3}{4}$ decimal of Thana No.198, Mauza Bara, P.S. Naubatpur, District Patna by two registered sale deeds dated 27.06.1989 since then have been in possession. It is alleged that on 22.02.2012 in the early morning the complainant was cutting his Masoor crop standing in the said field in the meantime, the accused persons along with 15-20 strangers variously armed turned up, threatened to leave the field and made demand of Rs.5,000/- by way of extortion. They also threatened that they would not permit to cut the crop unless extortion money is paid. Thereafter the accused persons cut the crop and taken it away to their home.

5. Learned counsel for the petitioners submits that it is true that the land mentioned in the complaint was purchased by the complainant from co-sharer of the petitioners. Knowing this fact the petitioners filed a petition in the court of D.C.L.R., Danapur under Section 16 of the Bihar Land Ceiling Act, 1961 claiming their right of preemption and deposited the consideration money as it was in the sale deed and two cases were instituted under the Land Ceiling Act with the respect to the said lands being Land Ceiling Case No.2 of 1992-93 and Land Ceiling Case No.3 of 1992-93. The D.C.L.R., Danapur passed the order in both cases giving direction to the vendor of the complainant to transfer the land in question to the petitioner no.1 and to receive the consideration money deposited by the petitioner. Ultimately it was



directed to give possession of the land in favour of the petitioners by the process of the court and Nazir submitted the report dated 28.07.1995 of giving possession so the possession of the land in question was given to petitioners on 28.07.1995 since then they have been coming in possession over the said piece of land, so there is no question of committing theft of standing crop as alleged by the complainant. The petitioners have been coming in possession right from the delivery of possession given on 28.07.1995 and the present case of theft is alleged to be committed on 22.02.2012. It is further submitted that it is settled principle of law that if both parties claim their right, title and possession over the disputed land in case of bona fide land dispute, there is no any offence of theft is made out.

6. Learned counsel appearing on behalf of opposite party no.2 submits that they filed appeal before the Collector, Patna numbered as 1 of 1995-96 and by order dated 08.11.1996 the appeal was admitted and also stayed the order of the DCLR and so they are in possession of the land in question.

7. Having considered rival submissions of both sides and on perusal of the records, it is apparent that petitioners after knowing the fact of purchase of the land in question by the complainant being adjacent raiyat and co-sharer of the vendor, claimed their right of preemption and filed a petition under Section 16(3) of the Bihar Land Ceiling Act in the court of DCLR and by order dated 14.06.1995



direction was given to the vendor of the complainant to transfer the land in favour of the petitioners within a month. Thereafter lapse of one month when vendor failed to transfer the land to the petitioners, the possession of the land in question was handed over to them by the process of the court. Possession was given on 28.07.1995, so prior to the order dated 08.01.1996, passed by the Collector, Patna, the petitioners were put in possession moreover order dated 08.01.1996 does not show that there was any order for recovery of possession. That appeal is still pending according to the submission advanced by the learned counsel for opposite party no.2. There appears right of preemption in favour of the petitioners and they were handed over possession also by the process of the court, so in this backdrop of the fact and legal position, the case of theft of crop is not made out against the petitioners, so present criminal proceeding including the order of cognizance dated 28.11.2012, passed by learned Judicial Magistrate, 1st Class, Danapur in Complaint Case No.174 (C) of 2012 is set aside.

8. This petition stands allowed.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.08.2017
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