

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38932 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- NALANDA (BIHARSHARIFF)

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1. Mukesh Kumar S/O Chandeshwar Gope Resident of Village- Kesaura, Police Station- Chandi, District- Nalanda
 2. Krishan Kumar S/O Chandeshwar Gope Resident of Village- Kesaura, Police Station- Chandi, District- Nalanda
 3. Chandeshwar Gope S/O Late Makun Gope Resident of Village- Kesaura, Police Station- Chandi, District- Nalanda
 4. Navin Kumar S/O Krishan Kumar Resident of Village- Kesaura, Police Station- Chandi, District- Nalanda
 5. Jamindra Gope S/O Late Kishori Gope Resident of Village- Kesaura, Police Station- Chandi, District- Nalanda

.... Petitioners

Versus

1. The State of Bihar
2. Naresh Prasad S/O Late Tripit Gope Resident of Village- Kesaura, Police Station- Chandi, District- Nalanda

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Sanjay Kumar, Advocate
For the State : Mr. Amrendra Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 12-09-2017

Heard learned counsel for the petitioner and the learned
APP appearing on behalf of the State.

2. The petitioners are accused in Complaint Case No.988(C) of 2010, pending in the court of Judicial Magistrate, 1st Class, Hilsa, Nalanda and they have filed this application for setting aside the cognizance order dated 14.09.2011. The cognizance has been taken under Sections 147, 323, 379, 447 and 504/34 of the Indian Penal Code.

3. A short fact giving rise to the case is that early in the morning on 15.11.2010 the complainant saw the accused persons



making bundle of paddy crop after cutting the crop from his Plot No.265, Khata No.94, Area 5 decimal. When the complainant objected then all accused persons threatened to kill him and assaulted with leg and fists and with the butt of the pistol and thereafter they had taken away the crop. The motive for the occurrence alleged is that accused persons wanted to purchase this land as the complainant had purchased the same earlier.

4. Learned counsel for the petitioners submits that this is a malicious prosecution and the fact is that the land from which the paddy is said to have cut by the accused persons was purchased by Mukesh Kumar, petitioner no.1, by a registered sale deed executed on 20.04.1998, a copy of the sale deed is Annexure-2. The complainant does not disclose that how he has got title of the said land moreover he has not filed counter affidavit bringing on record any document relating to his title. The complainant had also filed other five cases of similar nature with respect to different plots out of which this Court has quashed the proceeding in one complaint case vide judgment dated 14.02.2017, passed in Cr. Misc. No.2164 of 2015.

5. None appears on behalf of opposite party no.2.

6. Learned APP appearing on behalf of the State submits that *prima facie* case is made out against the accused persons.

7. Having considered the rival submissions and on perusal



of the record, the Court finds that there appears land dispute between both the parties and also the dispute appears civil in nature. Petitioners are able to show *prima facie* that they are purchasers of the land in question from which the paddy is alleged to have been cut further no material was produced on behalf of the complainant showing basis of ownership of the land.

8 However, the dispute appears civil in nature, so continuation of the criminal proceeding in present case would be abuse of the process of the Court, so the entire criminal proceeding inclusive of the cognizance order dated 14.09.2011, passed by Judicial Magistrate, 1st Class, Hilsa, Nalanda in Complaint Case No.988 (C) of 2010 is hereby set aside.

9. The application stands allowed.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.09.2017
Transmission Date	15.09.2017

