

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.27651 of 2012

Arising Out of PS.Case No. -669 Year- 2011 Thana -null District- GOPALGANJ

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1. Kashi Choudhary,
 2. Siyaram Choudhary,
 3. Sugriw Choudhary, all son of Rajdeo Choudhary,
 4. Ram Pravesh Choudhary, son of Kashi Choudhary,
 5. Rajdeo Choudhary, son of late Aklu Choudhary, all resident of village- Bishrampur, P.S.- Bhorey, District- Gopalganj

.... Petitioner/s

Versus

1. The State of Bihar
2. Rajesh Yadav, son of Bachcha Yadav, resident of village- Bishrampur, P.S.- Bhorey, District- Gopalganj

.... Opposite Party/s

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Appearance:

For the Petitioner/s : Mr. Suresh Prasad Bhakta, Advocate

For the Opposite Party/s : Dr. Rabindra Kumar, APP

Mr. Rajesh Kumar, Advocate

Mr. Pankaj Kumar Dubey, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 07-08-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 16.04.2012 passed by the Sub-Divisional Judicial Magistrate, Gopalganj, in Complaint Case No.669 of 2011/Tr. No.3873 of 2012 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioners for the offence under Section(s) 323, 427, 379 Indian Penal Code.

2. It has been submitted on behalf of the petitioners that Title Suit No.251 of 2009 is pending between the parties for the



same land as mentioned in the Complaint Petition. From the nature of the complaint, no criminal offence is made out. The matter is of civil dispute. The complainant and other witnesses in their statements have also admitted that there is civil dispute and Title Suit No.251 of 2009 is pending.

3. Counsel for the Opposite Party No.2 has submitted that witnesses have supported the case and thereafter the learned Magistrate has found *prima facie* case against the petitioners.

4. From the Complaint Petition, it appears that the complainant and the petitioners are own *Pattidaar*. The complainant has alleged that on the date of occurrence the accused persons (petitioners) assaulted him with fists and slaps when he raised objection for demolishing his *Palani* by them on the land as mentioned in the Complaint Petition. It is further alleged that Kashi Choudhary took away rupees ten thousand from the thatched house.

5. Lower court records were called for, which have been received.

6. From perusal of the Solemn Affirmation of the complainant and the statement of the other witnesses, it appears that they have admitted that there is land dispute between the parties and Title Suit No.251 of 2009 is pending between the parties for the same land as mentioned in the Complaint Petition.



7. The complainant in his Solemn Affirmation has levelled general and omnibus allegation that the accused persons abused and assaulted with fists and slaps. Similar statement has been made by other witnesses. All the witnesses including the complainant have admitted that land dispute is going on between the parties. The complainant has stated that Title Suit No.251 of 2009 is pending between the parties.

8. From the allegation in the Complaint Petition and Solemn Affirmation of the complainant as well as statement of the witnesses recorded during enquiry, this Court is of the view that the nature of dispute between the parties is civil in nature for which Title Suit is already pending between the parties.

9. It has been submitted by the counsel for the petitioners that Title Suit No.251 of 2009 has already been disposed off by the Sub-Judge, III, Gopalganj, on 08.10.2015.

10. In view of such, this Court is of the view that continuance of the criminal proceeding against the petitioners is abuse of process of Court and mere harassment to the petitioners.

11. Accordingly, the order dated 16.04.2012 passed by the Sub-Divisional Judicial Magistrate, Gopalganj, in Complaint Case No.669 of 2011/Tr. No.3873 of 2012 along with entire criminal proceeding against the petitioners is hereby quashed.



12. The application is, accordingly, allowed.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	19-08-2017
Transmission Date	19-08-2017

