

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.33055 of 2012

Arising Out of PS.Case No. -3 Year- 2010 Thana –Karagahar (Sidhi) District- SASARAM
(ROHTAS)

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Paras Nath Dubey, S/o Late Kanhaiya Dubey, R/o Village-Sohawalia (Kala) P.S.
Karagahar (Sidhi) District-Rohtas

.... Petitioner/s

Versus

1. State of Bihar.
2. Chandeshwar Dubey, S/o Late Kanhaiya Dubey R/o Village Sohawalia (Kala)
P.S. Karagahar (Sidhi) District-Rohtas

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Arbind Nath Pandey
For the O.P. No. 2 : Mr. Abhay Kumar Singh
Mr. Parmatma Singh
For the State : Mrs. Renuka Ratnakar, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL JUDGMENT
Date: 10-05-2017

Heard Mr. Arbind Nath Pandey, the counsel for the petitioner,
Mr. Abhay Kumar Singh, the counsel for the O.P. No. 2
(complainant) as well as Mrs. Renuka Ratnakar, APP for the State.

2. The petitioner seeks quashing of the order dated 25.08.2011,
passed by the Judicial Magistrate, 1st Class, Rohtas in G.R. No. 4 of
2010/Trial No. 2374 of 2011. The Learned Magistrate, as per
impugned order, refused to discharge the petitioner from the offence
Under Sections 379, 411 and 406 of the Indian Penal Code and
directed the petitioner to appear physically for framing of the charge.

3. The facts in brief is that on 02.12.2010, the O.P. No. 2
(complainant) lodged a case with S.H.O. O.P. Karagahar, district-
Rohtas alleging therein that partition amongst his three brothers took
place and as per memo of partition, some lands and a tractor bearing



No. BR-24 A 1997 along with its accessories came in his share. After the said partition, he went to Varanasi and when he returned back did not find the tractor and accessories on Darwaja. He subsequently, got information that his elder brother who is the petitioner before this Court dishonestly and stealthily removed the said tractor and concealed the same at the place of his in-laws. Accordingly, a Police Case vide Karghar P.S. Case No. 03 of 2010 was registered for the offence Under Section 379 of the Indian Penal Code. During investigation, the tractor, in question, was recovered by police from one Chandeshwar Dubey and subsequently the same was released in favour of the petitioner on his undertaking. The case was found true under Section 379, 411 of the Indian Penal Code and charge-sheet was submitted, on the basis of which, the court below took cognizance of offence under Sections 379 and 411 of the Indian Penal Code as per order dated 15.12.2010. The petitioner filed a Criminal Miscellaneous No. 22643 of 2011 for quashing the cognizance order dated 15.12.2010, which after some arguments was withdrawn by the petitioner as by that time, the petition to discharge the petitioner was rejected by the court below. The said order has been assailed before this Court for quashing the same.

4. The learned counsel for the petitioner submits that the petitioner is the owner of the tractor and its accessories. The said tractor was purchased after taking loan and he being the sole owner sold the same to one Chandeshwar Dubey on 05.01.2008 to the knowledge of O.P.



No.2 and family members. The family property has not been partitioned as alleged by the complainant. The memorandum of partition produced on behalf of the complainant is fabricated which is apparent from the fact that the father and mother have not been given any share in the said memorandum of partition. The owner book stands in the name of this petitioner and he had/has legal right to use or transfer the same and. In this view of the matter, no offence under Sections 379, 411 is made out and the impugned order is fit to be quashed.

5. The learned counsel for the O.P. No. 2 (complainant) as well as APP for the State opposed the submissions.

6. Perused the documents on records and L.C.R. It is not in dispute that the aforesaid tractor stands registered in the name of this petitioner. The police, in course of investigation, recovered the tractor and the same was released in favour of this petitioner considering his ownership. The petitioner being the rightful owner has every right to deal with the property in question. In the case in hand, the complainant disputes the right of the petitioner and claims the said tractor as his own under family partition which is denied by the petitioner. The dispute between the parties appears to be a civil dispute relating to ownership of the tractor which stands registered in the name of this petitioner. The ownership and legal right can be ascertained only after adjudication and in this view of the matter, the ingredients of Sections 379, 411 and 406 of the Indian Penal Code are



lacking so as to make the offence of theft or criminal breach of trust. A Partition Suit No. 154 of 2010 is pending before the court of Sub Judge-I, Rohtas in which the complainant has filed his written statement. The offence of theft has been defined in Section 378 of the I.P.C. according to which theft consists in the dishonest taking of any movable property out of the possession of another without his consent. Dishonest intention exists when the person so taking the property intends to cause wrongful gain to himself or wrongful loss to the other. The petitioner being registered owner of the tractor had/has legal right to use the vehicle in the manner he liked/likes. The petitioner, moved the tractor/accessories in the assertion of his *bona fide* claim of right and so this act of the petitioner does not fall within the offence of theft.

7. In this view of the matter, the criminal prosecution of petitioner would amount to misuse of process of Court. The order dated 25.08.2011, is not sustainable and is, accordingly, set aside and the prosecution of the petitioner is quashed.

This application stands allowed.

(Sanjay Kumar, J)

rohit/-

AFR/NAFR	NAFR
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