

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.29790 of 2012

Arising Out of PS.Case No. -1925 Year- 2010 Thana -Bachwara District- BEGUSARAI

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1. Praveen Kumar Jha Son of Ram Vilash Jha Resident of Village- Bachwara, P.S. Bachwara, District Begusarai
 2. Naveen Kumar Jha Son of Ram Vilash Jha Resident of Village- Bachwara, P.S. Bachwara, District Begusarai
 3. Ram Vilash Jha Son Of Late Bhuneshwar Jha Resident of Village- Bachwara, P.S. Bachwara, District Begusarai
 4. Sunita Devi Wife of Ram Vilash Jha Resident of Village- Bachwara, P.S. Bachwara, District Begusarai

.... Petitioner/s

Versus

1. The State of Bihar
2. Arun Kumar Jha Son of Late Rajendra Jha Resident of Village- Bachwara, P.S. Bachwara, District Begusarai

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Surendra Singh
For the Opposite Party/s : Mr. S.N. Shukla (APP)

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 03-05-2017

Heard both sides.

The petitioners have filed this application for quashing the order dated 10.01.2011 passed by Judicial Magistrate, 1st Class, Begusarai, in Complaint Case No. 1925(C)/2010 and the order dated 10.05.2012 passed by Additional Sessions Judge, 3rd in Criminal Revision No. 205 of 2011. The Magistrate, as per impugned order dated 10.01.2011 finding *prima facie* case for the offence under Sections 323, 448, 380/34 of the Indian Penal Code against the petitioners, ordered for issuance of summons against them.

The O.P. No. 2 is the complainant and the cousin brother of



petitioner no. 1. The father of O.P. No. 2 and petitioner no. 1 is full brother. The O.P. No. 2 filed a complaint case before the Chief Judicial Magistrate, Begusarai alleging that on 24.07.2010, all the petitioners forcibly entered into the house and threatened to oust him and directed to leave the house as the said house was given in his share and he was in occupation of the said house since the time of their ancestor. The complainant had purchased some land recently adjoining to the said house. It has been further alleged that the petitioners assaulted him by rod and lathi and on intervention of the family members of the complainant, they snatched gold chain worth Rs. 16,000/-, ear ring worth Rs. 8,000/-, cash amount Rs. 10,000/- and a bicycle. The Magistrate, in course of inquiry, recorded the statement of complainant, his wife and son and after assessing the material on record, ordered for issuance of summons.

The counsel for the petitioners submitted that both the parties are co-sharer residing in the same house since the time of ancestor. In the complaint petition itself the complainant has admitted a civil litigation with the petitioners. No independent witness or any person of the locality has come to support the allegation of assault. The witnesses examined during enquiry are all interested witnesses and they have common interest to evict the petitioners who are residing in the same house. The allegation of snatching ornaments, taking money and bicycle has been levelled only to make a case of theft. The parties are at litigating term for



partition of their ancestral property. The complainant had earlier lodged a Complaint Case against the petitioner no. 3 and other family members and on the basis of his complaint, a proceeding under Section 107 of Cr.P.C. was initiated vide non F.I.R. No. 389 of 2008 and subsequent thereafter other proceeding under Section 107 of Cr.P.C. was also initiated vide Case No. 192(M)/2010. In the above background, the learned counsel for the petitioners prays for quashing the impugned order.

Learned APP, on the other hand, opposed the prayer.

On perusal of materials on record, I find that both parties are descendants of common ancestor. The complainant of this case is cousin of petitioner no. 1 and other petitioners are his wife and son. From complaint petition, it appears that they are residing in common house. Prior to filing of present complaint petition, two proceedings consecutively were initiated under Section 107 of the Cr.P.C. I further find that no independent witness has been examined. There are contradictions also in their statement. They are at litigating term for their ancestral property. The allegation of assault and taking ornament, cash amount and bicycle appears general and omnibus against the petitioners. In such circumstance, I find that the impugned order if allowed to continue, it would amount to misuse of process of Court.

The impugned order dated 10.01.2011 passed by the Judicial Magistrate, 1st Class, Begusarai, in Complaint Case No.



1925(C)/2010 is, accordingly, quashed and this application is allowed.

(Sanjay Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	06.05.2017
Transmission Date	06.05.2017

