

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.40586 of 2014

Arising Out of PS.Case No. -1 Year- 2012 Thana -TARAPUR District- MUNGER

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1. Shri Jay Chaudhary S/o Late Dwarika Prasad Chaudhary
 2. Santosh Chaudhary @ Santosh Kr. Chaudhary S/o Late Surya Narain Chaudhary both R/o Dhobai, P.S.- Tarapur, Distt.- Munger
 3. Santosh Yadav @ Santosh Kr. Yadav S/o Vakil Yadav
 4. Vakil Yadav S/o Late Musharu Yadav
 5. Indradeo Yadav @ Bhagat S/o Late Chhabbu Yadav
 6. Piyush Yadav S/o Indradeo Yadav All R/o Rangram, P.S.- Tarapur, Distt.- Munger

.... Petitioners

Versus

1. The State of Bihar
2. Niroj Kumar Chaudhary @ Niraj Kumar Chaudhary S/o Arun Prasad Chaudhary R/o village- Dhobai, P.S.- Tarapur, Distt.- Munger

.... Opposite Party

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Appearance :

For the Petitioners : Mr. B. P. Psndey, Sr. Advocate
Mr. Pravin Kumar Sinha
For the State : Mr. Tapeswar Sharma (App)
For Opposite party No. 2 : None

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL ORDER

6 29-11-2017 Heard learned Counsel for the petitioners as well as the learned Counsel for the State.

Despite appearance of the learned Counsel for O.P. No. 2 and despite giving chance by the previous order none has turned up.

The petitioners seeks quashing of the order dated 7.6.2014 passed in Cr. Revision No. 258 of 2012 by the Additional Sessions Judge, Ist, Munger, whereby he has affirmed the cognizance order dated 2.6.2012 passed by CJM Munger taking cognizance of the offence under Sections 147, 148, 149, 379 and 504 of the IPC.



The short fact giving rise to the case is that a complaint was filed by O.P. No. 2 in the Court of CJM Munger and the same was sent to the Police under Section 156(3) Cr.P.C. for institution of the FIR. The allegation is that the complainant and the accused persons are agnates and a Partition Suit NO./ 39 of 2007 is pending in the Civil Court in which permanent injunction order dated 19.8.2010 was granted by the court concerned. On 2.11.2011 accused nos. 1 and 2 violating the injunction order came in the mango orchard and one newly planted mango plant was being cut away, when the complainant objected then accused Santosh Yadav opened fire from the country made pistol but it missed the target and further they made demand of Two Lakhs rupees in extortion.

Learned Counsel for the petitioners submits that admittedly there is partition dispute between both sides and due to this reason maliciously this false and frivolous case was lodged. The police conducted investigation but finding the same false submitted final form and recommended for prosecution under Section 182 and 211 IPC. Further submission is that if there is any violation of the order of permanent injunction then there is provision under Order 39 Rule 2 CPC, but no recourse has been taken under that provision which itself shows falsity of the case and it is settled that if there is semblance of title and as both sides



are fighting for possession of the land in the partition suit so in that situation no case of theft is made out.

Having considered the rival submissions and on perusal of the record the Court finds this prosecution to be malicious in nature as both sides are on litigating terms and partition suit is pending in the Civil Court of competent jurisdiction. If there is any violation of the order of permanent injunction granted by the Civil Court recourse is to take action under Order 39 Rule 2 CPC, but as submitted no such application too has been filed by the Opposite party showing falsity of the case. In the backdrop of the facts the present prosecution appears malicious in nature. No prima facie case of theft is being made out. So entire criminal prosecution inclusive of the cognizance order dated 2.6.2012 in Tarapur PS CaseNo. 1 of 2012 pending in the Court of Judicial Magistrate, 1st Class, Munger is hereby quashed.

The application stands allowed.

Snkumar/-

(Arun Kumar, J.)

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