

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.51098 of 2013

Arising Out of PS.Case No. -185 Year- 2013 Thana -PATNA COMPLAINT CASE District-
PATNA

=====

1. Ramashray Yadav S/o Late Chhotu Yadav Resident of Village- Gosnagar, P.S- Sarmera, Distt- Nalana.
2. Arbind Yadav S/o Ramashray Yadav Resident of Village- Gosnagar, P.S- Sarmera, Distt- Nalana.
3. Lalan Yadav S/o Ramashray Yadav Resident of Village- Gosnagar, P.S- Sarmera, Distt- Nalana.
4. Dom Prakasn Yadav @ Baudhu Yadav S/o Pratap Yadav Resident of Village- Gosnagar, P.S- Sarmera, Distt- Nalana.
5. Rajo Yadav S/o Late Chhotu Yadav Resident of Village- Gosnagar, P.S- Sarmera, Distt- Nalana.
6. Babloo Yadav S/o Rajo Yadav Resident of Village- Gosnagar, P.S- Sarmera, Distt- Nalana.

.... Petitioner/s

Versus

1. The State of Bihar
2. Shankar Kewat S/o Sita Ram Kewat Resident of Village- Gosnagar, P.S- Sarmera, Distt- Nalanda.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Sudhish Kumar
For the Opposite Party/s : Mr. Pankaj Kumar

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 28-06-2017

1. This is an application under Section 482 of the Cr.P.C. whereunder the petitioners have prayed to quash the order dated 30.07.2013 passed by the S.D.J.M. Barh (Patna) in Complaint Case no. 185(C) of 2013. The learned Magistrate as per impugned order finding *prima facie* case took cognizance of offence under Sections 323, 379 of the I.P.C. and summoned the petitioners.
2. Heard both sides.



3. The facts, in brief, is that the O.P. no. 2 filed a Complaint Case no. 185 (C) of 2013 on the file of A.C.J.M. Barh (Patna) alleging *inter alia* that on 13.03.2013 all the petitioners went over his land and started uprooting mushoor crops. The complainant raised protest whereupon they encircled the complainant and pointed rifle. They snatched mobile and a gold locket worth Rs. 21,000/- from his possession and also looted crops causing loss to the tune of Rs. 30,000/-.

4. The learned counsel for the petitioners submits that from the allegation no offence as alleged is made out. It is submitted that one Sita Ram Yadav being head of the family members filed a pre-emption case bearing no. 6 of 2010 under Section 16(3) of the Bihar Land Reforms Act in the court of Deputy Collector Land Reforms. After hearing both sides, the case was allowed and the O.P. no. 2 was directed to execute registered sale deed within three months. The O.P. no. 2 did not comply the said order in consequence of which the sale deed was executed through the process of court. The document was registered in favour of Sita Ram Yadav on 22.06.2012 and the vendee was put in possession thereof. The O.P. no. 2 did not file any appeal against the said order and so it has become final. The petitioners' family came in cultivating possession of the said land and so the question of cultivating the land by the O.P. no. 2 does not arise.



The complaint case has been filed after fifteen months of the execution of the sale deed in favour of Sita Ram Yadav. The order's of the court below without ascertaining the title and possession of the O.P. no. 2 is bad, not sustainable and is fit to be quashed.

5. The learned APP as well as the counsel for the complainant opposed the submissions. It was submitted that though the document in question was executed in favour of Sita Ram Yadav, but he was not put in possession through the process of the court. The O.P. no. 2 was in cultivating possession and by going over his land, the petitioners have committed overt act for which the learned Magistrate has rightly taken cognizance.

6. On going through the documents on records as well as hearing the learned counsel for the parties, I find that the land, in question, was acquired by Sita Ram Yadav who happens to be one of the family members of the petitioners. He filed pre-emption case in the court of Dy. Collector Land Reforms. The said pre-emption case no. 06 of 2010 was allowed. The O.P. no. 2 in spite of direction of D.C.L.R. did not execute the sale deed and consequently the document was executed and registered through the process of the court. It is not in dispute that the O.P. no. 2 did not challenge the said order by filing appeal before higher authority. The petitioners claim that the pre-emptor Sita Ram Yadav got possession as per direction of the



D.C.L.R. at the time of execution and registration of the sale deed. The present complaint case has been filed after nine months of the execution of the sale deed. The petitioners appear to be bona fide owner of the said land and so their criminal prosecution appears to be abuse of process of the Court.

7. In view of discussions made above, I find that the criminal prosecution of the petitioners is not sustainable and is fit to be quashed. Accordingly, the order dated 30.07.2013 passed in complaint case no. 185(C) of 2013 is quashed and the Cr. Misc. is allowed.

(Sanjay Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	30.06.2017
Transmission Date	30.06.2017

