

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.19631 of 2014

Arising Out of PS.Case No. -467 Year- 2013 Thana -KHAGARIA COMPALINT CASE District-
KHAGARIA

- =====
1. Nabin Kumar Singh, Son of Late Yogendra Prasad Singh
 2. Kanchan Mala Wife of Nabin Kumar Singh
both resident of village Chandi Tola Banni, P.S- Maheshkhunt, District- Khagaria.
 3. Abhinav Kumar @ Abhinav Kumar Raj Verma son of Late Yogendra Prasad Singh Permanent resident of village Chandi tola Banni, P.S- Maheshkhunt, District- Khagaria, at present C/o Sri P. Dasarath, House No. 6-3- 667/4/19, Samajiguda, Hyderabad 500082
 4. Abhishek Kumar son of Late Yogendra Prasad Singh Permanent resident of village Chandi Tola Banni, P.S- Maheshkhunt, District- Khagaria at Present Manviya Shiksha Sansthan, In front of Vankhandeshwar Temple, Mandana Kanpur, U.P- 209217
 5. Nilam Kumari wife of Sri Rajendra Mehta resident of village Baijnathpur, P.S- Saur Bazar, District- Saharsa.
 6. Poonam Kumari wife of Ram Ujagar Mahto
 7. Ram Ujagar Mahto son of Late Sukhdeo Mahto Both 6 and 7 Permanent resident of Village Telani, P.O+ P.S- Bithan, District- Samastipur at present Qtr No. 70, LIC Colony, Kankarbagh, Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Alok Kumar Singh Son of Late Yogendra Prasad Singh Permanent resident of Village Chandi Tola Banni, P.S- Maheshkhunt, District- Khagaria at present residing at Samir Nagar, Ward no. 25, P.S- Chitragupta Nagar, District- Khagaria.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Mritunjay Kumar
For the Opposite Party No. 2	:	Mr. Binod Kumar
For the State	:	Mr. Akhileshwar Dayal, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 21-06-2017

1. The petitioners seek quashing of the order dated 21.01.2014 passed by the Judicial Magistrate, Khagaria in Complaint Case No. 467 (C) of 2013 whereunder cognizance of the offence under Sections 323, 380, 448/34 of the Indian Penal Code was taken against



the petitioners.

2. The facts, in brief, is that the O.P. No. 2 filed a complaint case on the file of C.J.M., Khagaria alleging *inter alia* that on 25.04.2013, he got informant on mobile that all the accuseds persons (petitioners) entered into his house situating at Chandi Tola after breaking the lock and took away his belongings worth Rs. 5 lacs.

3. The learned counsel for the petitioners submits that the O.P. No. 2 has not come with clean hand. The petitioner nos. 1, 3 and 4 are full brothers and petitioner nos. 5 and 6 are full sisters of the complainant. The petitioner no. 2 is the wife of the petitioner no. 1 and the petitioner no. 7 is the husband of the petitioner no. 6. All the petitioners reside at different place and on the date of alleged occurrence, none of them were present in the Village. The petitioner no. 1 is an employee as a pharmacist in the clinic of a doctor. The petitioner no. 2 is the wife of petitioner no. 1 and lives with him. The petitioner no. 2 after completed his school education from Sainik School Tilaiya, Hazaribagh and got degree of Bachelor of Engineering from B.I.T. MESRA and Master of Business Administration from I.I.T. Mumbai and on the alleged date of occurrence, he was present in his office namely, Ramky Enviro Engineers Limited at Hyderabad. The petitioner no. 4 got a degree in B. Tech (Mechanical) from I.I.T Kanpur and further M. Tech from



I.I.T. Kanpur and on the alleged date of occurrence, he was working at Kanpur. The petitioner no. 5 is a practicing advocate and on the alleged date of occurrence, she was attending a meeting at District Advocate Association, Saharsa. The petitioner no. 7 is a teacher in Kendriya Vidyalaya, Kankarbagh Patna and on the date of alleged occurrence, he along with his wife (petitioner no. 6) was in Patna in connection with his duty. He further submits that the petitioner no. 5, who is the full sister of the complainant, filed two Civil Suits bearing Title Suit No. 122 of 2009 and Partition Suit No. 205 of 2009 against the O.P. No. 2 (complainant). The petitioners and complainant are descendants of common ancestor and they all are in joint possession of their ancestral house and landed property. The ancestral house is being claimed by the complainant as exclusive property. The complainant claims the said house by virtue of a gift deed which was executed by his mother. The petitioners reside at different place and it was not possible for anyone to indulge in such occurrence. The house, in question, is in joint possession of the petitioners and so the question of breaking lock does not arise. The allegation of taking away articles worth Rs. 5 lacs has been cooked up for making the offence grave. The complainant resides at Khagaria and it is not supposed that he would keep the valuable articles at the Village home which is in a dilapidated condition. The case has been filed only to



harass the petitioners so that, they may surrender their interest in favour of the complainant.

4. The learned APP, on the other hand, opposed the submissions by submitting that the court has taken cognizance of offence on the basis of materials on records.

5. On going through the annexures enclosed with the application, I find that both parties are descendants of common ancestor. Petitioner nos. 1 to 6 are full brothers and sisters of the complainant and they claim that they are in possession of the house which has been alleged to be the place of occurrence. The complainant has suppressed his relationship with the petitioners. He has not stated about the relationship either in the complaint petition or at the time of statement given before the court below. He admits this fact, only on query to the court question. It further appears that much before filing of the present complaint case, the petitioner no. 5 filed two Civil Suits against the complainant. The house, in question, which has been cited as the place of occurrence is also the subject matter of the said suit. The petitioners claim share of the said ancestral house. I further find that one of the witnesses examined at the time of inquiry, is a resident of different place. There are contradictions also in the statement of complainant and other witnesses on the manner of occurrence and presence of the wife of the complainant at the place of



occurrence. Both parties are at litigating term for their landed property. In such circumstance, continuance of the criminal proceeding in face of two Civil Suits between the co-sharers for their landed property would amount to gross abuse of the process of Court.

6. This application is allowed and the order dated 21.01.2014 passed by the Judicial Magistrate, 1st Class, Khagaria in Complaint Case No. 467(C) of 2013 is hereby quashed.

(Sanjay Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	23.06.2017
Transmission Date	23.06.2017

