

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.40448 of 2013

Arising Out of PS.Case No. -3240 Year- 2011 Thana -KATIHAR COMPLAINT CASE District-
KATIHAR

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1. Maheshwar Prasad Sah Son Of Late Dharmchand Sah R/O Village-Laxmipur, P.S.-Barari, Distt-Katihar
 2. Mahadeo Sah Son Of Late Dharmchand Sah R/O Village-Laxmipur, P.S.-Barari, Distt-Katihar
 3. Shiv Kumar Sah Son Of Sri Maheshwar Sah R/O Village-Laxmipur, P.S.-Barari, Distt-Katihar
 4. Fanti @ Banti Sah @ Deoverath Kumar Gupta Son Of Sri Shiv Kumar Sah R/O Village-Laxmipur, P.S.-Barari, Distt-Katihar
 5. Shantu Devi @ Shanti Gupta D/O Maheshwar Sah R/O Village-Laxmipur, P.S.-Barari, Distt-Katihar
 6. Nilam Devi @ Neelam Gupta D/O Shiv Kumar Sah R/O Village-Laxmipur, P.S.-Barari, Distt-Katihar
 7. Milan Sah @ Milan Gupta Son Of Mahadeo Sah R/O Village-Laxmipur, P.S.-Barari, Distt-Katihar
 8. Anil Sah Son Of Late Mangan Sah R/O Village-Laxmipur, P.S.-Barari, Distt-Katihar
 9. Prema Devi Wife Of Sri Anil Sah R/O Village-Laxmipur, P.S.-Barari, Distt-Katihar
 10. Sunil Sah Son Of Late Mangnan Sah R/O Village-Laxmipur, P.S.-Barari, Distt-Katihar
 11. Anju Devi D/O Late Mangan Sah R/O Village-Laxmipur, P.S.-Barari, Distt-Katihar
 12. Ashok Sah @ Ashok Kumar Gupta Son Of Late Mangan Sah R/O Village-Laxmipur, P.S.-Barari, Distt-Katihar
 13. Ajay Sah Son Of Abas Shastri Sah R/O Village-Laxmipur, P.S.-Barari, Distt-Katihar
 14. Manoj Sah Son Of Late Mangan Sah R/O Village-Laxmipur, P.S.-Barari, Distt-Katihar

.... Petitioner/s

Versus

1. The State Of Bihar
2. Gyani Mandal Son Of Late Ayodhi Mandal

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Jawed Ahmad
For the Opposite Party/s : Mr. Prem Kr. Jha (App)

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL ORDER

5 30-01-2017

Heard learned counsel for the petitioners and learned



counsel for the opposite parties.

2. This application, under Section 482 of the Code of Criminal Procedure, is directed against the order dated 20.04.2013 passed in Complaint petition No. 3240 of 2011, whereby the Judicial Magistrate, 1st Class, Katihar, has taken cognizance of the offence under Sections 147, 323 and 379 of the Indian Penal Code against the petitioners.

3. According to the prosecution, brief facts are that the father of the complainant who is said to be Sikmidar of the land under Sikmi Khata No. 109, Sikmi Khesra No. 11, 52, 53 measuring an area of 4.32 acres of Mouja Laxmipur and after his death, the complainant stepped into his shoes and cultivating the aforesaid land continuously, in which, the complainant had planted several Sisem and Bamboo trees along with other crops. It is alleged in the complaint that suddenly it has come to the notice of the complainant that 20.-25 labourers armed with lathi, Garasa, Farsha and Deshi pistol are cutting the paddy crop of the complainant and upon protest, the accused persons have assaulted the complainant and his wife along with their son badly and snatched Rs. 1000/- and the ornaments of the wife of the complainant and also tried to outrage the modesty of the wife of complainant by tearing away the wearing cloths.

4. Learned counsel for the petitioners has submitted that the dispute between the parties relates to a land, therefore, this case is of purely a civil in nature. No occurrence has taken place and the



petitioners have falsely been implicated in this case. In fact, there is no material available on record to show that the alleged occurrence have ever took place nor there is any injury which supports the prosecution version and implication of these petitioners for the alleged charge in order to make out a case for taking cognizance under offence under Sections 147, 323, 379 of the I.P.C. against the petitioners. The learned court below has not appreciated the material on record and has taken cognizance in a routine manner. It is submitted that the occurrence is alleged to have taken place in 20.11.2011 whereas the complaint was filed on 12.12.2011 after lapse of 22 days of the alleged occurrence. On the aforesaid ground, it is submitted that the cognizance order is bad in law and is fit to be quashed.

5. Learned A.P.P has submitted that there is specific allegation against the petitioners that they have assaulted the complainant and his wife and tried to outrage the modesty of complainant's wife. Though there is land dispute between the parties, but, at this stage, complicity of the complainant cannot be ruled out as a, prima facie, case is made out against the petitioners for taking cognizance. Thus, the impugned order does not require any interference by this Court.

6. Perused the impugned order. Admittedly, the dispute between the parties arose on account of a land but the court below has applied its judicial mind keeping in view of the materials available on record and exercised its judicial discretion to satisfy itself that a prima



face case is made out against the petitioners for taking cognizance and, accordingly, took cognizance. Thus, the impugned order taking cognizance for the offence under Sections 147, 123 and 379 of the I.P.C does not require any interference at this stage.

7. Accordingly, the criminal miscellaneous application, being devoid of merit, stands dismissed.

(Arvind Srivastava, J.)

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