

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.20782 of 2012

Arising Out of Sultanganj P.S. Case No. -141 Year- 2008, District- PATNA

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1. Mohammad Sagiruddin, S/o Late Sadruddin
2. Ashma Khatoon, W/o Mohammad Sagiruddin, both are R/o village-Khan Mirza,
P.S. Sultanganj, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Md. Imranuddin @ Imran, S/o Late Rijwanuddin, R/o Moh. Khan Mirza, P.S.
Sultanganj, District-Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. N.A. Shamsi, Advocate

Mr. Syed Ehteshamuddin, Advocate

For the Opposite Party/s : Mr. Nawal Kishore Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 25-01-2018

Heard learned counsel for the petitioners and the learned
APP for the State.

This application under Section 482 of the Code of
Criminal Procedure has been filed for quashing the order dated
21.03.2009 passed by the learned Judicial Magistrate, Patna City in
Complaint Case C.A. No. 699 of 2008, by which the learned
Magistrate after holding enquiry has found *prima facie* case against
the petitioner and others for the offence under Sections 323,504,427
and 380 of the Indian Penal Code.

Learned counsel for the petitioners has submitted that
complainant is nephew of petitioner no. 1. This complaint case has
been filed due to land dispute and also as a counter blast to Sultanganj
P.S. Case No. 141 of 2008 dated 10.08.2008 lodged by petitioner no.
1 against the complainant and two other accused persons.



Learned counsel for the petitioners further submitted that civil suit is pending between the parties being Title Suit no. 80 of 1997.

The opposite party no. 2 has appeared through vakalatnama, but today on call no one appeared on behalf of opposite party no. 2.

In the complaint petition there is allegation that these petitioners and other accused persons on 10.08.2008 after forming unlawful assembly armed with pistol, entered into the house of the complainant and asked to vacate the house. The accused persons assaulted and abused the complainant, his mother and brother and also forcefully obtained signature over the paper to get the house vacated. The accused persons also threw the household articles and took away the ornaments from the bags.

From the averments made in the complaint petition, it appears that there is land dispute between the parties. The complainant is own nephew of petitioner no. 1. It is also mentioned in the complaint petition that Title Suit No. 80 of 1997 is pending between the parties.

The counsel for the petitioners has filed Annexure-2 to show that earlier for the occurrence dated 10.08.2008 Sultanganj P.S. Case No. 141 of 2008 was lodged by petitioner no. 1 against the complainant and two other accused persons and the instant case has been filed as a counter blast. The occurrence took place on



10.08.2008 but the complaint has been filed in the court on 25.08.2008.

The court below has by the impugned order, on the basis of statement of the witnesses recorded during enquiry as well as solemn affirmation of the complainant found prima-facie case against the petitioner and other accused persons for the offence under Section 323,504,427 and 380.

From the nature of allegation in the complaint, this court is of the view that the same has been filed to settle the score on account of land dispute. Moreover, from the averment made in the complaint, itself, this court does not find any ingredients of the offence under which the court below has found prima-facie against the petitioners and other accused persons.

Therefore, the impugned order dated 21.03.2009 passed by the learned Judicial Magistrate, Patna City in Complaint Case C.A. No. 699 of 2008 along with entire criminal proceeding with regard to petitioners is hereby quashed.

This application is, accordingly, allowed.

(Sanjay Priya, J)

khushbu/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
Uploading Date	07-02-2018
Transmission Date	07-02-2018

