

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.35460 of 2013

Arising Out of PS.Case No. -2408 Year- 2010 Thana -WEST CHAMPARAN COMPLAINT
District- WESTCHAMPARAN(BETTIAH)

- =====
1. Paramhans Tiwary, s/o late Hirshikesh Tiwari,
 2. Sachidanand Tiwari, s/o late Hirshikesh Tiwari,
 3. Sashikant Tiwari, s/o late Hirshikesh Tiwari,
 4. Rama Shankar Tiwari @ Shankar Tiwari, s/o late Awadh Tiwari,
 5. Ratinath Tiwari, s/o late Awadh Tiwari, all resident of village-Jagdishpur Adda,
Police Station- Jagdishpur, District- West Champaran

.... Petitioner/s

Versus

1. The State of Bihar
2. Sitaram Ram, s/o late Dukhan Ram, resident of village- Bahuarwa, Police
Station- Jagdishpur, District- West Champaran

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar No.7, Advocate

For the Opposite Party No.1: Mr. Mayanand Jha, APP

For the Opposite Party No.2: Mr. Sanjeev Kumar No.1, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 09-05-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 30.05.2013 passed by the Judicial Magistrate, Bettiah, in Trial No.166 of 2013 arising out of Complaint Case No.2408-C of 2010 by which the learned Magistrate has rejected the application filed by Petitioners under Section 245 Cr. P.C. for their discharge.

2. Case of the Complainant is that the Petitioners used to take work from the Complainant and his forefather for the last 20-25 years as labourers without giving proper wages. The



Complainant-Opposite Party No.2 worked till 2009 and thereafter left the work of the Petitioners. On 14.03.2010, the Petitioners came at the door of the Complainant and abused by taking his caste name and threatened to demolish *Indira Awaas* of the Complainant. The Petitioners, again, arrived on 19.08.2010 variously armed and surrounded the house of Opposite Party No.2 (Complainant). They assaulted him with *lathi*, fists, slaps and looted several articles worth Rs.30,000/-.

3. Heard learned counsel for the Petitioners and learned APP for the State as well as counsel for the Opposite Party No.2.

4. Counsel for the Petitioners has submitted that, initially, complaint was filed under Section 3(i)(x)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act along with offences of Indian Penal Code, but the Trial Court disbelieved the allegation alleged under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. There is land dispute between the parties on account of which this false case has been filed by the Complainant. The Petitioners have filed Title Suit No.153 of 2010, which is pending in the Court of Munsif, Bettiah, West Champaran, in which family members of the Opposite Party No.2-Complainant as well as witnesses of the present case are



defendants. The Opposite Party No.2 has filed present Complaint only with a view to grab the land, which is subject matter of Title suit.

5. Learned counsel for the Opposite Party No.2 has submitted that the Court below after looking into the evidence before Charge has rejected the petition filed on behalf of the Petitioners under Section 245 Cr. P. C.

6. Learned APP has submitted that there is no illegality in the impugned order.

7. This Court after looking into the allegation in the Complaint Petition and the impugned order finds that Petitioners have filed Title Suit No.153 of 2010, which is pending in the Court of Munsif, Bettiah, West Champaran. The family members of the Opposite Party No.2 as well as witnesses of the present case are defendants in the suit. Plaint of the aforesaid Title Suit has been enclosed as Annexure-3 with this petition. The Complainant has levelled allegation against the Petitioners that on 19.08.2010 the Petitioners variously armed surrounded the house of Opposite Party No.2 (Complainant) and assaulted him with *lathi*, fists, slaps and looted several articles worth Rs.30,000/-

8. The Court below in the impugned order has mentioned that *prima facie* case was found for the offence under



Section(s) 323, 504, 380/34 Indian Penal Code by order dated 24.05.2010. The witnesses have stated in their evidence before Charge that these Petitioners after entering into the house looted away articles worth Rs.30,000/-. Thereafter, Court below has rejected the petition filed under Section 245 Cr. P. C.

9. Section 245 (1) Cr. P. C. speaks *If, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.*

10. In the instant case, from the Complaint Petition itself, it appears that mere vague allegation has been made by the Complainant against the accused persons that they arrived in the house of the Complainant and committed *Maarpeet* and also looted away articles.

11. From the impugned order, it appears that mere vague statement has been made by the witnesses in their evidence before Charge. It is admitted position that Petitioners have filed Title Suit No.153 of 2010, which is pending in the Court of Munsif, Bettiah, West Champaran, in which family members of the Complainant as well as witnesses of the present case are defendants. Xerox copy of the plaint of aforesaid Title Suit has been annexed as



Annexure-3. Therefore, there is pending land dispute between the parties.

12. From bare perusal of the Complaint Petition, it appears that general, vague and omnibus allegation has been made against these Petitioners on account of land dispute between the parties.

13. Therefore, impugned order passed by the learned Court below is not in accordance with law.

14. Accordingly, impugned order dated 30.05.2013 passed by the Judicial Magistrate, Bettiah, in Trial No.166 of 2013 arising out of Complaint Case No.2408-C of 2010 along with entire criminal proceeding against the Petitioners is hereby quashed.

15. This application is, accordingly, **allowed**.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	12-04-2018
Uploading Date	12-05-2018
Transmission Date	12-05-2018

