

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.14344 of 2012

Arising Out of P.S.Case No. -0 Year- null Thana -null District- MADHUBANI

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1. Upendra Mehta, s/o Atwari Mehta,
 2. Annu Devi, w/o Upendra Mehta, both resident of village- Ganeshpur, P.S.- Puraini, District- Madhepura, and Ward No.-3/4 Madhepura, P.S. & District- Madhepura, at Present Address- Tengu Market Sabji Mandi, District- West Kning, Arunachal Pradesh.

.... Petitioner/s

Versus

1. The State of Bihar
2. Yogi @ Yogendra Mehta, s/o late Atwari Mehta, resident of village- Ganeshpur, P.S.- Puraini, District- Madhepura.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Shekhar Kumar Singh, Advocate
For the Opposite Party/s	:	Mr. APP
		Mr. Binod Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 22-03-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 16.02.2012 passed by the Sessions Judge, Madhepura, in Cr. Revision No.39 of 2011 by which he has dismissed the revision application filed by the petitioners against the order dated 18.04.2011 passed by the Sub-Divisional Judicial Magistrate, Madhepura, in Complaint Case No.1175 of 2007 whereby and whereunder the learned Magistrate after holding enquiry has found *prima facie* case against the petitioners and others for the offence under Section(s) 147, 323, 379 Indian Penal Code.

Heard counsel for the petitioners and the learned APP



for the State as well as counsel for the Opposite Party No.2.

Counsel for the petitioners has submitted that petitioner no.1 and the Complainant are own brothers. Instant complaint has been filed by the Complainant out of property dispute between the parties. The Complainant has already filed Title Suit No.07 of 2008 against the petitioners and others, which is pending between the parties for the same piece of property as mentioned in the Complaint Petition.

Counsel for the Opposite Party No.2 has appeared and submitted that there is no illegality in the impugned order.

The Complainant has alleged in the Complaint Petition that on the date of occurrence while the Complainant along with his son had gone to Civil Court for making proper pairvi, these petitioners and other accused gave threat to the Complainant. The petitioners and other accused persons also assaulted the son of the Complainant and took away cash of rupees thirty five thousand.

Learned Magistrate after holding enquiry in the aforesaid Complaint Petition found *prima facie* case against the petitioners and other accused persons for the offence under Section(s) 147, 323, 379 Indian Penal Code.

Revision Application being Criminal Revision No.39 of 2011 was filed by the petitioners before the Sessions Judge, which was rejected by order dated 16.02.2012.



Counsel for the petitioners has filed Supplementary Affidavit today in Court stating therein in para 3 that present Complainant has already filed Title Suit vide Title Suit No.07 of 2008, which is pending in the Court of Sub Judge I, Madhepura, and the petitioners have already appeared in that suit as defendants. Property involved in the Title Suit is same property as mentioned in the Complaint Petition.

From perusal of the impugned order passed by the learned Magistrate as well as Sessions Judge in Revision Application, it appears that both the Courts have passed order in mechanical manner without discussing the case of the parties. Learned Magistrate has mentioned in the order dated 18.04.2011 that witnesses have supported the case during enquiry and, so, he has found *prima facie* case for the offence under Section(s) 147, 323, 379 Indian Penal Code. Learned Sessions Judge in the order dated 16.02.2012 passed in Cr. Revision No.39 of 2011 has not found any illegality in the order and has held that the petitioners have opportunity to cross-examine the witnesses before Charge and after Charge. They can also raise grievance before the Court below at the time of framing of Charge.

From perusal of the Complaint Petition, it will appear that there is land dispute between the parties. It further appears that both the Complainant and the petitioner no.1 are own brothers and



there is dispute between them for ancestral property. Petitioner no.2 is wife of petitioner no.1. Title Suit has already been filed by the Complainant vide Title Suit No.07 of 2008, which is pending before the Sub Judge-I, Madhepura. The petitioners have appeared in that Title Suit as defendants and the same is pending between the parties for the same property, which is mentioned in the Complaint Petition.

Therefore, this Court is of the view that continuance of the criminal proceeding against the petitioners would be abuse of the process of law as the Complainant has already taken civil remedy for the grievance and Title Suit is pending between the parties.

In view of such, order dated 16.02.2012 passed by the Sessions Judge, Madhepura, in Cr. Revision No.39 of 2011 as well as order dated 18.04.2011 passed by the Sub-Divisional Judicial Magistrate, Madhepura, in Complaint Case No.1175 of 2007 along with entire criminal proceeding against the petitioners is hereby quashed.

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

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	07-04-2018
Transmission Date	07-04-2018

