

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.53038 of 2017

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1. Sahitya Bhushan Pandey, Son of Jata Shankar Pandey,
2. Rajiv Ranjan Pandey, of Sahitya Bhushan Pandey, Both resident of
Village- Mathauli, P.S.- Bairia, District- West Champaran at Bettiah
(Bihar).

.... Petitioners

Versus

1. Raj Kumar Pandey, Son of Jata Shankar Pandey, Both resident of
Village- Mathauli, P.S.- Bairia, District- West Champaran at Bettiah
(Bihar).
2. The State of Bihar.

.... Opposite Partys

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Appearance :

For the Petitioner/s : Mr. Dhanendra Chaubey, Advocate
For the Opposite Party/s : Mr. Harendra Kr. Tiwary, Advocate
Mr. Sri Mukeshwar Dayal, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

3 07-02-2018 This application has been filed for review of order dated

04.09.2017 passed by this Court in Cr.Misc.No.19685 of 2014

whereunder the institution of F.I.R. for the offence under Section

188 of the I.P.C. and cognizance order passed against the

respondent was quashed.

2. Heard learned counsel for the petitioners as well as
the opposite parties.

3. Learned counsel for the petitioners submitted that the
opposite party no.1 has suppressed the material fact at the time of
hearing of Cr.Misc.No.19685 of 2014. The learned counsel for the
opposite parties had wrongly submitted that the injunction petition



filed by present petitioners was rejected by the court of Subordinate Judge and secondly that no supplementary affidavit was filed on behalf of the petitioner of Cr.Misc.No.19685 of 2014. Besides that several facts have been suppressed and the order has been passed against the materials on record.

4. The learned counsel for the opposite parties, on the other hand, opposed the prayer to review the order of this Court passed on 04.09.2017 as is not maintainable in view of the provision of Section 362 of the Cr.P.C.

5. On perusal of the order passed in Cr.Misc.No.19685 of 2014 as well as the documents on record, I find that the present petitioners had filed a petition on 09.02.2012 before the Officer-in-charge of Bairiya, West Champran stating therein that his father and full brother were intending to make new building over the land of his share. The concerned police station enquired into the matter and recommended for initiating a proceeding under Section 144 of the Cr.P.C. The S.D.M. as per order dated 13.09.2012 initiated a proceeding under Section 144 of Cr.P.C. and directed both the parties to file show-cause on 21.09.2012. The petitioner Sahitya Bushan filed hazri along with power on 21.09.2012 and prayed for time for filing show-cause. Subsequently the present petitioner filed a petition before S.D.M. for lodging F.I.R. for the



offence under Section 188 of the I.P.C. In the said petition the petitioner alleged that on 17.09.2012 he visited at the disputed land and found the lock of his room broken and the room was locked by another lock and on query his brother assaulted him. The petitioner has further alleged that the opposite parties have constructed house over the disputed land in violation of the prohibitory order passed under Section 144 of Cr.P.C. In this regard the concerned police station visited at the place of occurrence and after enquiry a report was submitted.

6. On perusal of documents on record I find that the opposite parties are father and full brother of the petitioner. They are at litigating term and prior to initiation of proceeding under section 144 of Cr.P.C. a partition suit bearing Partition Suit No.148 of 1995 was filed by the petitioner before the Court of Subordinate Judge-I. The plaintiff-petitioner filed injunction petition before the court below which after hearing was dismissed on 16.04.1996. The opposite party no.1 has annexed the said order as Annexure A to the counter affidavit filed on his behalf. Thus, I find no force in the submission of learned counsel for the petitioner that his injunction petition was not rejected in the said partition suit. From paragraph 7 of show-cause, I find that petitioner of Cr.Misc.No.19685 of 2014 filed his show-cause



before the Court of S.D.M. wherein he had asserted that his brother was living separately by making pucca house at different place. The pendency of partition suit before Civil Court shows that the land in dispute is jointly owned and possessed by the family of petitioner and opposite parties. The petitioner has not denied the fact as asserted by the opposite parties in the show-cause filed before the S.D.M. The order dated 04.09.2017 was passed by this Court considering the entire facts available on record. I find that nothing has been suppressed by the petitioner of Cr.Misc.No.19685 of 2014 and the impugned order was passed after considering all the documents on record.

7. This application is not sustainable and is, accordingly, dismissed.

(Sanjay Kumar, J)

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