

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.37405 of 2014

Arising Out of PS.Case No. -1085 Year- 2013 Thana -COMPLAINT CASE District- SUPAUL

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Lalan Yadav Son of Gauri Shankar Yadav R/O/V- Laxminiya (East), P.S. - Tribeniganj, District - Supaul.

.... Petitioner

Versus

1. The State of Bihar.
2. Rana Prasad Singh S/o Late Ganga Prasad Singh R/O/V- Laxminiya (East), P.S. - Tribeniganj, District - Supaul.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar @ S.K.

For the Opposite Party/s : Mr. Pranav Kumar(App)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

- 7 10-01-2018 1. Heard the learned counsel for the petitioner, State and the opposite party no. 2.
2. The present petition has been filed for quashing the order 05.07.2014 passed by the Judicial Magistrate- 1st class, Supaul in complaint case no. 1085C of 2013 whereby, the learned Magistrate has taken cognizance for the offence punishable under Sections 447, 323, 379 of Indian Penal Code.
3. The case of the complainant in brief as per the complaint petition dated 03.10.2013 is that on 17.08.2013, the complainant received telephonic information that the petitioner with the help of labourers is cutting the trees standing on the land of the opposite party no. 2. The complainant is said to have gone



at the place of occurrence and intervened in the matter but he was assaulted by the petitioner. Thereafter, the police came and the petitioner could not take away the tree which was being cut.

4. The learned counsel for the petitioner submits that the allegations leveled in the complaint petition do not constitute the offence as alleged under Sections 447, 323 and 379 of Indian Penal Code. It is further submitted that even as per the allegations leveled in the complaint petition, the tree was not taken away by the petitioner, hence the offence under Section 379 of Indian Penal Code is not made out. It is further submitted that a bare reading of the complaint petition also do not constitute any cognizable offence. It is next submitted that the learned Judicial Magistrate-1st class, by the impugned order dated 05.07.2014 has, in a perfunctory manner without assigning any reason, taken cognizance against the petitioner herein and the same cannot be said to be an order which shows that the learned Judicial Magistrate-1st class has applied his mind hence, the impugned order, in no way, shows application of mind by the learned Judicial Magistrate-1st class.

5. *Per contra*, the learned counsel for the opposite party no. 2 submits that atleast there is an allegation of assault hence, the impugned order does not deserve to be quashed since the



cognizance has rightly been taken by the learned Judicial Magistrate.

6. I have perused the materials on record and heard the learned counsel for the parties. I find that the impugned order dated 05.07.2014 is perfunctory in nature and does not show any application of mind on the part of the Judicial Magistrate. Moreover, a bare reading of the complaint also does not constitute commission of any cognizable offence hence, I am of the view that the order dated 05.07.2014 passed by the Judicial Magistrate-1st class in complaint case no. 1085C of 2011 is liable to be quashed.

7. Accordingly, the order dated 05.07.2014, as aforesaid, is quashed and the present petition is allowed.

(Mohit Kumar Shah, J.)

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