

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.51352 of 2014

Arising Out of PS.Case No. -862 Year- 2009 Thana -PATNA COMPLAINT CASE District-
PATNA

- =====
1. Satendra Singh @ Daldal Singh,
 2. Binod Kumar Singh,
 3. Pramod Kumar Singh, all sons of late Kripa Singh, resident of Mahaddipur, P.S. Gaurichak, District Patna.

.... Petitioner/s

Versus

1. The State of Bihar,
2. Umesh Prasad Singh, S/o Late Deo Prasad Singh, R/o Village Allaiddin Chak, P.S. Punpun, District Patna, A/p Mohalla- Munnachak, C/122, Hope Mahindra Apartment, P.S. Patrakar Nagar, District Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rewti Kant Raman, Advocate

For the Opposite Party/s : Mr. APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 09-07-2018

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 16.05.2009 passed by the Judicial Magistrate, 2nd class, Patna, in Complaint Case No.862-C of 2009 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioners for the offence under Section(s) 379, 323, 504 Indian Penal Code.

Notice was issued to the Opposite Party No.2, which



has validly been served upon the Opposite Party No.2, but none has appeared on behalf of the Opposite Party No.2.

Counsel for the petitioners submits that it is totally a civil dispute. First Appeal No.97 of 2002 as well as First Appeal No.349 of 2003 are pending between the parties. These petitioners have been falsely implicated in this case only because they have challenged the decree passed in T.S. No.384 of 1996 before this Hon'ble Court by filing First Appeal No.97 of 2002 and First Appeal No.349 of 2003. The Complainant has alleged in the Complaint that the land, as mentioned in the Complaint Petition, was allotted in Final Decree prepared in T.S. No.384 of 1996 and his name has also been mutated. When the Complainant went to see the plot for harvesting lentil (*Masoor*) then he saw that the accused persons were taking away the crops. The Complainant asked the accused persons to stop cutting the crop. Then, accused persons abused and assaulted him.

Counsel for the petitioners has submitted that Title Suit No.384 of 1996 was filed by the Complainant for partition of 1/3rd share. Both the parties are co-sharer. Aforesaid suit was decreed in favour of the Complainant by judgment and decree dated 25.01.2002. Aforesaid judgment has been challenged by the



petitioner Nos.1 to 3 in the Hon'ble High Court vide First Appeal No.97 of 2002. During pendency of aforesaid First Appeal No.97 of 2002, the Complainant filed a petition for preparation of final decree upon which Advocate Commissioner was appointed and on the basis of report of the Advocate Commissioner final decree was prepared. Thereafter, petitioner Nos.1 to 3 have preferred First Appeal No.349 of 2003 against the final decree passed by the Court below.

In such circumstances, this Court is of the view that civil suit is pending between the parties. Both parties are co-sharer of the property. The instant case has been filed by the Complainant to wreak vengeance because of pendency of civil suit between the parties.

There is general and omnibus allegation levelled against the petitioners in the Complaint Petition.

In view of such, continuance of criminal proceeding against the petitioners will be mere harassment and abuse of process of Court.

Accordingly, impugned order dated 16.05.2009 passed by the Judicial Magistrate, 2nd class, Patna, in Complaint Case No.862-C of 2009 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	16-07-2018
Transmission Date	16-07-2018

