

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.993 of 2021**

Arising Out of PS. Case No.-264 Year-2019 Thana- GOPALGANJ COMPLAINT CASE
District- Gopalganj

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1. NITISH KUMAR YADAV @ NITISH YADAV S/o Birbal Yadav R/V Chrauv, P.S.- Kuchaikot, Distt- Gopalganj
 2. Manoj Yadav @ Manoj Prasad Yadav Son of Birbal Yadav R/V Chrauv, P.S.- Kuchaikot, Distt- Gopalganj

... .. Appellant/s

Versus

1. THE STATE OF BIHAR
2. Amir Baitha S/o Late Gopal Baitha R/V- Chrauv, P.S.- Kuchaikot, Distt- Gopalganj.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Jitendra Kumar Singh
For the Respondent/s : Mr. Sadanand Paswan

**CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
Date : 17-11-2022**

This is an application for quashing the order dated 24.02.2020 passed by the learned Additional District and Sessions Judge-I, Gopalganj in Complaint Case No. 264 of 2019, whereby and whereunder cognizance has been taken against the appellants for the offence under Sections 147, 323, 341 of the Indian Penal Code and Section 3(1)(x) of the SC/ST Act.

The facts of the case, in short, is that one Amir Baitha purchased a piece of land pertaining to Khata No. 64, Plot No. 489/891 measuring 3 Katha from one Amir Ahmad.



The said land is adjacent to the land of the complainant. It is further alleged that other side at a sudden encroached some parts of land and constructed a toilet in one night. When the complainant asked Birbal Yadav then he abused him and called other persons who came and all assaulted the complainant with fists and slaps by taking his castes name. It is further alleged that one Nitish Yadav took Rs. 5000/- from his pocket and a woolen Shawl of Rs. 2000/- and Ramashrya Yadav took away H.M.T. watch of Rs. 500/-. It is further alleged that the said land was measured by *Anchal Amin* and the same has been found to be of the complainant.

3. The cognizance order has been challenged mainly on the ground that cognizance has been taken against the appellants along with one dead person and two other such persons, who were not present at the time of the alleged occurrence. Besides this, the court below has not taken into consideration that with regard to the disputed land, the complainant had earlier lodged the civil suit.

4. Learned Special P.P. appearing on behalf of the State opposed the appeal and submitted that the plea of *alibi* is required to be proved in trial. So far as taking cognizance against a dead person is concerned, the same fact has not been



brought to the notice of the trial Court otherwise cognizance would not have been taken against such person. Even now it can be brought to the notice of the Court and the proceedings against such person can be concluded

So far as pendency of the civil suit with regard to the disputed land is concerned, the commission of a criminal offence is an independent act even if the same has been committed on the disputed land.

5. Having considered the above facts and circumstances of the case and the materials available on records, this Court agrees with the submissions advanced by the learned Special Public Prosecutor. The order taking cognizance has been passed on the basis of the prosecution story and the evidence of the witnesses and there is no error in the same. I do not find any merit in this appeal. The appeal is, accordingly, dismissed at the stage of admission itself.

(Arvind Srivastava, J)

mcv/-

AFR/NAFR	N/A
CAV DATE	N/A
Uploading Date	04.02.2023
Transmission Date	04.02.2023

