

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.34568 of 2016**

Arising Out of PS. Case No.-45 Year-2012 Thana- MOTIHARI TOWN District- East  
Champaran

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1. Madan Thakur and Ors son of Late Ganesh Thakur
  2. Hiralal Thakur son of Ganesh Thakur
  3. Ram Nath Sharma @ Ram Nath Thakur son of Late Ganesh Thakur
  4. Krishna Thakur son of Late Ganesh Thakur
  5. Surendra Thakur son of Late Ganesh Thakur
- All are resident of Village- Siswa Maldiha, Police Station- Paharpur,  
District- East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Gaya Thakur @ Ganga Thakur son of Late Madho Thakur, resident of  
Village- Siswa Maldiha, Police Station- Paharpur, District- East Champaran.

... .. Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr.Sanjay Kumar No.-7, Advocate  
For the Opposite Party/s : Mr.Sri Ashok Kumar Singh 1, APP

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**CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH**  
**ORAL JUDGMENT**

**Date : 01-09-2025**

Heard learned counsel appearing on behalf of the  
petitioners and the learned APP for the State.

2. The present application has been filed for quashing  
the order dated 24.05.2016 passed in Trial No.1040 of 2016  
arising out of Motihari Town P.S.Case No.45 of 2012. As per the  
complaint case No.102 of 2012, which was converted into the  
FIR. Informants are three brothers, out of them, two brothers  
had died issueless. Gaya Thakur (O.P.No.2) is the sole legal heir  
of his deceased father. It is claimed that on 07.02.1970, a



partition of the land took place between the family of the O.P.No.2 and the accused persons. Hira Lal Thakur (petitioner no.2) dissatisfied by the family arrangement had filed a Partition Suit No.156 of 2011 in which he had filed Vakalatnama and allegedly obtained the forged signature of O.P.no.2 (the informant), namely, Gaya Thakur on the Vakalatnama and on the Hazari.

3. Learned Counsel appearing on behalf of the petitioners submitted that the petitioners filed discharge application under Section 239 CrPC before the learned ACJM 12<sup>th</sup> Motihari, East Champaran, against the cognizance order dated 13.08.2013, who rejected the discharge petition vide order dated 24.05.2016 without applying his judicial mind. Learned counsel further submitted that on bare perusal of the allegations and the entire facts as contained in the FIR the matter in dispute is in regard to partition of land between the parties, being purely civil in nature can be resolved either amicably or by availing remedy before the competent Civil Court. The continuation of criminal proceeding will amount to abuse of process of law in absence of any element of criminality drawn against the Petitioners.

4. Learned APP has submitted that the ingredients of



accusation against the petitioner calls for criminal prosecution.

The present application is fit to be dismissed.

5. Heard the parties.

6. Whether civil and criminal proceedings both can be maintained on the very same set of allegations *qua* the same person? The answer *stricto sensu*, is that there is no bar to simultaneous civil and criminal proceedings. If the element of criminality is there, a civil case can co-exist with a criminal case on the same facts. The fact that a civil remedy has already been availed of by a complainant, *ipso facto*, is not sufficient ground to quash an FIR, as pointed out.

7. The Hon'ble Supreme Court has cautioned that jurisdiction under Section 482 Cr.P.C. should be used sparingly for the purpose of preventing abuse of process of any court or otherwise to secure ends of justice. The consideration requires for the same is to arrive to a definite finding, whether a compliant discloses criminal offence or not in the facts of the present case, fulfilling the essential ingredients of the offence as has been alleged against the petitioner. The only question in the instant case is, whether, there is any criminal offence disclosed in the F.I.R. so far as the petitioner is concerned.

8. The allegation of forging the signature by the



petitioner no.2 of the informant and in absence of having been supported by any evidences. I find no case is made out against the petitioners. Law in this regard is well settled by the Apex Court in the case of ***Paramjeet Batra v. State of Uttarakhand*** reported in ***(2013) 11 SCC 673***, in which, the Apex Court in paragraph no. 12 has held as follows:

*"12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court."*

9. The proposition has been considered by the Apex Court in the case of ***P. Swaroopa Rani vs. M. Hari Narayana @ Hari Babu*** reported in ***(2008) 5 SCC 765*** and ***Syed Askari Hadi Ali Augustine Imam v. State (Delhi Admn.)*** reported in ***(2009) 5 SCC 528***.

10. In the present case, the manner in which the FIR has been drawn against the petitioner in absence of any element



of criminality no criminal case can be made out.

11. I find that the learned District Court has committed an error in rejecting the discharge application of the petitioner on the ground that the FIR discloses criminal offence, whereas, from very perusal of the FIR, it appears that the main allegation relates to partition between the parties.

12. The Apex Court has reiterated the aforesaid preposition in recent judgment of ***S.N.Vijayalakshmi & Ors. vrs. The State of Karnataka and Anr.*** reported in ***(2025) SCC Online SC 1575***

13. Considering the submissions made on behalf of the parties and the law laid down by the apex court, the order taking cognizance dated 24.05.2016 passed in Trial No.1040 of 2016 arising out of Motihari Town P.S.Case No.45 of 2012 is hereby set aside and quashed with respect to present petitioners.

14. The present application is accordingly allowed.

**(Purnendu Singh, J)**

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