

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.16828 of 2022

Arising out of PS. Case No.-4580 Year-2021 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Rajesh Kumar Sinha @ Bambam Son of Late Awadhesh Kumar Sinha Resident of Ashok Nagar, Road No. 1d, P.S. Kankarbagh, District - Patna, At Present Assistant General Manager, Union Bank Of India, Vidhan Bhawan Marg, Nariman Point, P.S. Nariman Point, District - Mumbai.
 2. Brajesh Kumar Sinha @ Onkarji Son of Late Awadhesh Kumar Sinha Resident of Ashok Nagar, Road No. 1d, P.S. Kankarbagh, District - Patna, At Present Sr. Pass, Train Manager, Katwa Railway Station (h.d.), P.S. - Katwa, District - East Burdwan (west Bengal).
 3. Mukesh Kumar Sinha @ Kaju Sinha Son of Late Awadhesh Kumar Sinha Resident of Ashok Nagar, Road No. 1d, P.S. Kankarbagh, District - Patna, At Present S.M. Sonachara Station (asansol Division), District - West Burdwan (west Bengal).

... .. Petitioner/s

Versus

1. The State of Bihar
2. Shiv Shankar Bariyar @ Lalji Son of Late Ram Chandra Prasad Resident of Salam West of Quarter No. 1/B- 129, Kankarbagh Housing Colony, P.O. Lohiyanagar, P.S. - Kankarbagh, District - Patna-800020.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Akhauri Kamal Kishore Sahay, Adv.
For the State	:	Mr. Syed Mojibur Rahman, APP
For the O.P. No. 2	:	Mr. Sanjeev Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE ANSUL
ORAL JUDGMENT

Date : 23-06-2026

Heard learned counsel for the petitioners, learned
counsel for the Opposite Party No. 2 and learned Additional Public
Prosecutor for the State.

2. Petitioners seek quashing of the order of cognizance
dated 16.12.2021 passed by learned Additional Chief Judicial
Magistrate-VIII, Patna in Complaint Case No. 4580(C) of 2021 by



which he has taken cognizance under Sections 323, 341, 504, 379/34 of IPC.

3. The complainant has lodged this case with the allegation that he was adopted by his maternal uncle (Mama) and maternal aunt (Mami) and he started living with them from 1968 due to his love and affection towards them. There was a double storeyed house admeasuring area of 2 Kathas 7.5 Dhurs which was purchased by his maternal aunt (Mami) namely Radha Devi on 29.08.1962 through registered Sale Deed No. 6107. Out of love and affection, the maternal aunt (Mami) of the complainant executed and registered the will in favour of the complainant. In 2018, when the complainant filed will then the maternal aunt (Mami) Radha Devi amended the will by stating that in case of death of the complainant, his sons namely Nilesh Shankar and Rishi Shankar would be the successor. Maternal aunt (Mami) died on 21.11.2020, the complainant filed the Probate Case No. 52 of 2021 which was pending before Additional District and Sessions Judge-XXI, Patna.

4. Learned counsel for the complainant states that the accused persons are the off-springs of the elder sister of the complainant namely Usha Sinha. They not only attacked and



looted them but also presented a forged will dated 20.04.2012 and they were threatening to dispossess them.

5. Learned counsel for the petitioners submits that this is a civil dispute. One probate case has been filed and there is another will of 2012 which is also being adjudicated upon. This is not even the case of the complainant that he has been ousted from the house. If he has any such threat he has the opportunity of moving the Probate Court seeking injunction.

6. Learned counsel for the Opposite Party No. 2 as well as Additional Public Prosecutor for the State has vehemently opposed the quashing of the order dated 16.12.2021. Learned counsel for the Opposite Party No. 2 states that the whole will was executed much prior twenty two years prior to death of the said Radha Devi which was a registered document. Moreover, the same was modified through codicil in 2018 in favour of off-springs of the complainant which shows genuineness of the document.

7. The case is out and out civil in nature. The parties seek their owner-ship or possession of the house for which adjudication before the competent Court is pending. In such view of the matter, in the opinion of the Court, this is purely a civil dispute which has given colour of criminal dispute and the machinery of criminal justice is being used to gain advantage in



the civil procedure. The issue raised by the learned counsel for the Opposite Party No. 2 reinforces the opinion of this Court that the dispute is essentially civil in nature. The genuineness or otherwise of the will has to be decided by a Court of competent jurisdiction and not by this Court.

8. In such view of the matter, the order of cognizance dated 16.12.2021 passed by learned Additional Chief Judicial Magistrate-VIII, Patna in Complaint Case No. 4580(C) of 2021 by which he has taken cognizance under Sections 323, 341, 504, 379/34 of IPC is quashed so far as the petitioners are concerned.

9. Accordingly, the present petition is allowed.

(Ansul, J)

Vikash/-

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

