

Abdul Wahid and ors Vs. the State of Bihar and anr

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Court : Patna

Decided On : May-24-2012

Appellant : Abdul Wahid and ors

Respondent : The State of Bihar and anr

Judgement :

IN THE HIGH COURT OF JUDICATURE AT PATNA Criminal Miscellaneous
No.12773 of 2010

===== 1. Abdul Wahid, S/o Late Abdul Hamid, 2. Munna @ Julfekar Ali, s/o.Abdul Wahid 3. Baharan @ Sanaullah, s/o Late Abdul Gani 4. Irshad Alam @ Irshad Hussain s/o Baharan @ Sanaullah 5. Nurul Haque Mian s/o. Late Abdul Gani 6. Shamim Alam s/o Nurul Haque Mian 7. Afrose Alam s/o Nurul Haque Mian 8. Masud Ahmad s/o Late Muzahid Mian 9. Daud Ahmad s/o Masud Ahmad All are resident of village Inerwa Ebadullah, P.S.Gopalganj, District Gopalganj. Petitioner/s Versus 1. The State Of Bihar 2. Kitabuddin Ali s/o Najurullah, resident of village Inerwa Ebadullah, P.S.Gopalganj, District Gopalganj. Opposite Party/s

===== Appearance : For the Petitioner/s : Mr. Rakesh Kumar Srivastava, Advocate For the State : Mr. Jitendra Kumar Singh No.1, APP For O.P.No. 2 : Mr. Umesh Kumar Singh, Advocate

===== CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN ORAL ORDER (Per: HONOURABLE MR. JUSTICE VIKASH JAIN

24. 01-2012 The present application has been filed for quashing the order dated 15.09.2009 taking cognizance by the learned Judicial Magistrate, Gopalganj in Complaint Case No. 2744(C) of 2008/Tr.No. 3120 of 2009 for the offences under Sections 147,323,379 and 427 IPC.

2. The complaint discloses inter party land disputes which in due course resulted in T.S.No.167 of 1977 and Patna High Court Cr.Misc. No.12773 of 2010 (5) dt.24-01-2012 2 T.S.No.77 of 1987. It appears that the dispute in these two Title Suits have even led upto filing of Second Appeal No. 569 of 1983 before this Court which is stated to be pending since 1994 after its admission.

3. Learned counsel for the petitioners has submitted that on the face of it the entire matter relates to civil dispute in relation to which criminal case has been instituted against the petitioners and cannot be sustained in the facts and circumstances of the case.

4. Learned counsel for the opposite party no.2 on the other hand submits with reference to the counter affidavit filed today that no doubt a civil dispute relating to the land lies at the root of differences between the parties, but there are specific averments made in the complaint raising allegations of assault and snatching at least against petitioner nos. 1 and 3 based on which a prima facie case is made out for continuing the prosecution against them.

5. After hearing the parties and upon a consideration of the facts of the case, this Court is of the view that the complaint discloses both civil and criminal aspects.

6. In view of the specific allegations against the petitioner nos. 1 and 3 as also on the settled principles that the Courts Patna High Court Cr.Misc. No.12773 of 2010 (5) dt.24-01-2012 3 ought not to interfere if a prima facie case is made out on the uncontroverted facts stated in the complaint, I am not inclined to grant any relief to them at this stage.

7. As far as petitioner nos. 2 and 4 to 9 are concerned I find that there is no specific allegation of any offence alleged whatsoever against them in the complaint and as such, the matter partakes the character of a predominantly civil

dispute as against them.

8. In this view of the matter, therefore, the order of cognizance dated 15.9.2009 in so far as concerns petitioner nos. 2 and 4 to 9 is hereby quashed.

9. The petition is accordingly partly allowed. (Vikash Jain, J.) Chandran

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