

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 8538 of 2013

Arising out of P. S. Case No. - 1954 Year - 2010 Thana - SAHARSA COMPLAINT CASE District -

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1. Kamal Prasad Singh, Son of Late Bindeshwari Singh
 2. Nilam Devi, Wife of Kamal Prasad Singh
 3. Randhir Kumar Singh, Son of Kamal Prasad Singh
 4. Pintu Singh, Son of Sri Lal Prasad Singh
 5. Tinku Singh, Son of Sri Lal Prasad Singh
 6. Lal Prasad Singh, Son of Bindeshwari Prasad Singh

All are residents of village – Lahuar, Police Station – Mahishi, and
District - Saharsa

.... Petitioner/s

Versus

1. The State of Bihar
2. Smt. Sunita Devi, Wife of Deo Kishore Singh, Resident of Village –
Lahuar, Police Station – Mahishi, District - Saharsa

.... Opposite Party/s

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Appearance :

For the Petitioners : Mr. Dinesh Maharaz, Advocate
Mr. Satish Kumar Singh, Advocate
For the Opposite Party : Mr. Jharkhandi Upadhyay, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL ORDER

5 09-07-2015

Heard.

This is a petition for quashing the proceedings of Complaint Case No. 1954 C of 2010, dated 13.12.2010 filed by Smt. Sunita Devi as well as the order taking cognizance dated 19.07.2012 for the offences under Sections 147, 341, 323 and 379 of the Indian Penal Code.

Learned counsel for the petitioners submits that with regard to the occurrence two police cases have been filed which is a case and counter case. The petitioner no. 1 filed a case bearing Mahishi P.S. Case No. 159 of 2010, dated 10.12.2010. The

counter case to P.S. Case 159 of 2010 filed by Deo Kishore Singh the husband of the complainant bearing Mahishi P.S. Case No. 160 of 2010 dated 11.12.2010 and with regard to the same occurrence a complaint was also filed by the wife of the informant Deo Kishore Singh of Mahishi P.S. Case No. 160 of 2010.

The case of the complainant as alleged in the complaint Smt. Sunita Devi, W/o Deo Kishore Singh is that she has acquired a land comprising Khata No. 162 (old) Khata No. 100 (new) bearing Plot Nos. 209 Area 13 decimals with specified boundary having been acquired by Basgeet Purcha and was coming in peaceful possession. They have uprooted the old *Tati* and installed new *Tati* and coming in possession. Then accused no. 2 came, abused and protested the installation of *Tati* claiming the land and stated that at present she is the Mukhiya she will do as she likes and then called the other accused persons named in complaint petition as accused nos. 1, 3, 4, 5 and 6 and they abused the complainant and broke the *Tati* and destroyed it and uprooted the *Khuta* and when Prem Kumar, Son of complainant protested then he was assaulted and injured and threatened that if he tries to install the *Tati* then will be killed. As soon as the informant came out of house to go to police station then accused nos. 1 to 6 of complaint petition threatened to kill so the complainant was



compelled to return and could not lodge the case on that day. It is further alleged that at 11:30 P.M. while the complainant was sleeping in the house after the occurrence then accused persons came armed with rifle, gun and got the complainant and his family got up and asked to open the door and when informant refused to open the door then they broke open the door and entered into the house and snatched cash worth Rs.50,000/-, jewelry, mobile, clothes at the point of pistol and fired in an attempt to kill but the shot did not hit. It is further alleged that accused persons kidnapped the son of the complainant on motor vehicle and got his signature on plain paper for illegal use and closed him in a room. The accused persons, thereafter, while celebrating the event by taking meat and wine and become unconscious then the son of the complainant in captivity manage to flee away and return back in the morning and disclosed about the occurrence. When the complainant went to lodge the case in the police station then he was told to go file the case in Court.

The occurrence alleged is dated 10.12.2010 from 4:30 to 11:30 P.M. but complaint was filed on 13.12.2010. On the complaint the complainant was examined on solemn affirmation and other witnesses were examined and after examination the summons were ordered to be issued after taking cognizance of the

case under Sections 147, 323, 341 and 379 of the Indian Penal Code.

Prior to filing of the complaint the accused no. 1 Kamal Prasad Singh of the complaint petition no. 1954 C of 2010 who is petitioner no. 1 filed a police case bearing Mahisi P.S. Case No. 159 of 2010 with regard to the same occurrence dated 10.12.2010 alleging that at 5:30 P.M. accused persons encroached upon the land by force and when the wife of the informant protested then the complainant, her son and daughter-in-law abused, assaulted and snatched the chain and threatened to implicate in false case including rape.

A counter case was also lodged by the husband of the complainant with regard to the same occurrence being Mahisi P.S. Case No. 160 of 2010 dated 11.12.2010 showing the time of occurrence 5:30 P.M. on 10.12.2010.

The learned counsel for the petitioners has challenged the order taking cognizance as well entire proceeding on the complaint to be quashed on the ground that the allegation made in the complaint is false and is only the exaggerated version of the First Information Report lodged by the husband of the complainant i.e. Mahisi P.S. Case No. 160 of 2010 dated 11.12.2010. However, it is submitted that charge-sheet has been

submitted in Mahisi P.S. Case No. 160 of 2010 dated 11.12.2010 and cognizance has already been taken in this case.

However, it is stated that allegation made by Deo Kishore Singh the husband of complainant in Mahishi P.S. Case No. 160 of 2010 is that the accused persons thrown earth on his *Tati* and when the family members of Deo Kishore Singh-the informant protested then the accused Kamal Prasad Singh, Nilam Singh, Lal Bahadur Singh, son of Late Bindeshwari Singh, son of Lal Bahadur Singh, Randhir Singh abused, damaged and destroyed his *Tati* causing mischief and assaulted, when the villagers came then they were saved. It is further alleged that Rs.50,000/- has been taken away by the accused persons. The date of occurrence alleged to be half past five to quarter to six.

However, at this stage, this Court while considering the petition for quashing of the complaint as well as the order taking cognizance, cannot go into the question whether the allegations are true or false. The falsity or truthfulness of allegation can only be tested at the stage of trial and not at this stage. If the allegation makes out an offence then the complaint or the First Information Report cannot be quashed on the ground that the allegations are false and even if the complaint is an exaggeration of fact alleged that can only be considered at trial

about the falsity or truthfulness of allegation but cannot be quashed in extra ordinary jurisdiction under Section 482 Cr.P.C.

However, with regard to the same occurrence if two cases have been filed by the same complainant or same set of prosecution party and particularly one is police case and other is a complaint then the procedure is that such cases are to be dealt with.

Section 210 Cr.P.C. provides that procedure when there is police investigation and a complaint case in respect of same offence. It also provides that during course of enquiry or trial held by him, it appears that an investigation by police is in progress the Magistrate shall stay the proceeding of inquiry or trial and call for report from police after conducting the investigation and if report is submitted under Section 173 of the Cr.P.C. and on such report cognizance is taken against a person accused in case shall enquire into and by together the complaint case and case arising out of the police report as both the cases was instituted on police report. If the police report does not related to accused in complaint case or if any does not take cognizance of any offence on police report he shall proceed with enquiry or trial what was stayed by him.

Hence, in that view of the matter the learned trial

Court where the complaint is pending shall call for a report from the Court where Mahisi P.S. Case No. 160 of 2010 is pending and shall proceed in accordance with law in term of Section 210 of the Cr.P.C.

Hence, with this observation, the petition is disposed of.

(Gopal Prasad, J.)

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