

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.1119 of 2015

Arising Out of PS.Case No. -252 Year- 2013 Thana -DARBHANGA COMPLAINT CASE District-
DARBHANGA

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Laxmi Devi, Wife of Late Haribansh Ram, Resident of Village-Kamtaul, P.S-
Kamtaul, Distt.-Darbhanga

.... Petitioner

Versus

1 The State of Bihar

2. Mahendra Paswan, Son of Beni Paswan, Resident of Village-Kamtaul, P.S-
Kamtaul, Distt.-Darbhanga

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Akhileshwar Prasad Singh, Senior Advocate
Mr. Govind Mohan Thakur, Advocate
Mr. Abhishek Anand, Advocate
For the Opposite Party-State: Ms. Asha Devi, APP
For the Opposite Party No.2: Mr. Arun Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 02-12-2015

Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for the Opposite Party No.

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2. By way of present application under Section 482
of the Code of Criminal Procedure (For short “Cr. P.C.”), the
petitioner seeks quashing of the order dated 27.10.2014, passed in
Criminal Revision No. 470 of 2013 by the learned Ad hoc



Additional District & Sessions Judge-IV, Darbhanga, whereby and whereunder he has dismissed the revision preferred against the order dated 14.08.2013, passed by the learned Judicial Magistrate-1st Class, Darbhanga in Complaint Case No. 252 of 2013, whereby and whereunder learned Judicial Magistrate took cognizance of the offences punishable under Sections 323, 427, 379 of the Indian Penal Code (For short “IPC”) and summoned the petitioner and others to face trial.

3. The Opposite Party No. 2 has alleged in the complaint that a plot measuring 15 decimals pertaining to Khata No. 387, Khesra Nos. 5088 and 5083 in village-Kamtaul, District-Darbhanga, stands in the name of his grandfather Desai Dom. One of the accused namely, Vinod Paswan, always used to ask him to sell the said land, but he refused. The petitioner, being Sarpanch of the Gram Panchayat, Kamtaul, registered a false case that is Gram Panchayat Case No. 33 of 2012 dated 13.05.2012 and in that case, order was passed in favour of one of the accused Vinod Paswan. He has further alleged that on 18.07.2012 at about 04:00 P.M. when he went to the said land then all the accused persons abused him and also assaulted him with fists and accused Vinod Paswan took away Rs.4000/- from his pocket.

4. The contention of the petitioner is that prior to the



present case, the complainant had filed a complaint case vide C.R. No. 1496 of 2012 levelling the same allegations in the court of the Chief Judicial Magistrate, Darbhanga against the petitioner and others. The said complaint was sent to the police under Section 156(3) Cr. P.C. for investigation pursuant to which Kamtaul P.S. Case No. 142 of 2012 dated 03.08.2012 was registered under Sections 420, 467, 468, 471, 427, 504, 323, 379 & 506 IPC against the petitioner and five others. On completion of investigation, the police found the allegations made in the FIR to be false. Accordingly, a final report was submitted under Section 173(2) of Cr. P.C. holding that accusation to be false. The Jurisdictional Magistrate accepted the police report.

5. The plea of the petitioner is that being aggrieved by the police investigation, the Opposite Party No. 2 filed the present complaint reiterating the allegations made in the previous complaint on the basis of which FIR was registered. The learned Judicial Magistrate recorded the statement of the complainant on solemn affirmation and on behalf of complainant, two witnesses, namely, Laxman Pawan and Asha Devi, were examined in enquiry conducted under Section 202 Cr. P.C. After recording the statements of the complainant and the inquiry witnesses, the learned Jurisdictional Magistrate mechanically took cognizance of the



offences under Sections 323, 427 and 379 of IPC and summoned the petitioner and others to face trial vide order dated 14.08.2013. The said order dated 14.08.2013 was challenged by the petitioner before the learned Ad hoc Additional District & Sessions Judge-IV, Darbhanga in Criminal Revision No. 470 of 2013, but the revisional Court erroneously dismissed the revision application vide impugned order dated 27th October, 2014.

6. Mr. Akhileshwar Prasad Singh, learned senior counsel for the petitioner has submitted that the revisional Court has failed to appreciate the facts and law involved in the present case. He has contended that the Jurisdictional Magistrate as well as the revisional Court has mechanically passed the order without appreciating the fact that for adjudicating a case in accordance with law, a Sarpanch of the Gram Panchayat cannot be prosecuted in the criminal case. He has submitted that in case the Opposite Party No. 2 was aggrieved by the order passed by the Sarpanch, he ought to have challenged the order before the appropriate authority/forum, but in no circumstance, a criminal prosecution could have been allowed to proceed on such allegations. He has further contended that so far as the allegation of assault or taking away Rs.4,000/- from the pocket of the complainant is concerned, the same has been brought with ulterior motive in order to humiliate and harass the

petitioner for deciding a case against the Opposite Party No. 2. Mr. Singh has pleaded that the matter was duly investigated by the police and after recording the statements of independent witnesses, the police had come to a definite finding that the accusation made against the petitioner and other accused persons was false.

7. On the other hand, learned counsel for the Opposite Party No. 2 has submitted that the instant application amounts to second revision, which is barred under Section 397(3) Cr. P.C. He has submitted that the complainant and two witnesses examined on his behalf, in course of inquiry, have fully corroborated the prosecution case and there is no error in the order passed by the learned Judicial Magistrate, whereby a prima facie case was found under Sections 323, 427, 379 of the IPC and the petitioner and others were summoned to face trial.

8. Learned counsel for the State has adopted the arguments advanced by the learned counsel for the Opposite Party No.2.

9. I have heard learned counsel for the parties and carefully perused the record.

10. It is true that second revision is barred in law. It is equally true that order, which was under challenge before the revisional Court, is also under challenge in the present application



filed under Section 482 Cr. P.C. Normally, this Court would have declined to interfere with the revisional order. However, there is no absolute bar in law in entertaining an application under Section 482 Cr. P.C. after the revision application is dismissed by the Sessions Court. It is well settled that in case of exceptional circumstances, even if a revision application has been dismissed by the Sessions Court, this Court may entertain an application filed under Section 482 of the Cr. P.C.

11. In the case of **Raj Kapoor & Ors. v. State & Ors. [(1980) 1 SCC 43]**, the Hon'ble Supreme Court, while distinguishing the power of the High Court vis-à-vis Section 482 of Cr.P.C. observed that Section 397 or any of the provisions of Cr. P.C. will not affect the amplitude of the inherent power preserved in Section 482 Cr. P.C. Furthermore, apart from the inherent power under Section 482 Cr. P.C., the High Court has continuous supervisory jurisdiction under Section 483 Cr. P.C. and, in exceptional cases, if abuse of the process of court is proved, the High Court may interfere with the revisional order passed by the Sessions Court.

12. Coming back to the facts of the present case, I find that the main grievance of the Opposite Party No.2/complainant is that the petitioner had wrongly entertained



Gram Panchayat Case No. 33 of 2012 filed by one of the accused Vinod Paswan and decided the same in his favour and against the Opposite Party No. 2 illegally. It would be apparent from the record that on the same set of allegations, an FIR was instituted and on completion of investigation, the police had submitted final report holding the accusation to be false and on perusal of the police report and the materials available in the case diary, the Jurisdictional Magistrate had accepted the same.

13. It is true that the complainant and his witnesses have supported the allegation made in the complaint, but the same would not attract a criminal prosecution. Furthermore, in view of the attending circumstances as discussed hereinabove, I am of the opinion that the allegations have been levelled just because the petitioner has decided the issue against the Opposite Party No. 2 and in favour of the co-accused Vinod Paswan. Apparently, the complaint case launched by the Opposite Party No. 2 is an abuse of the process of court and allowing the same to continue would not be in the interest of justice.

14. In that view of the matter, the impugned order dated 27.10.2014, passed by the learned Ad hoc Additional District & Sessions Judge-IV, Darbhanga, in Criminal Revision No. 470 of 2013, is hereby quashed. Consequently, the order dated 14.08.2013,

passed by the learned Judicial Magistrate-1st Class, Darbhanga, in Complaint Case No. 252 of 2013 and the entire proceeding including the complaint of Complaint Case No. 252 of 2013, is hereby quashed.

15. The application stands allowed.

(Ashwani Kumar Singh, J.)

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