

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.17880 of 2015

Arising Out of PS.Case No. -319 Year- 2011 Thana -BHOJPUR COMPLAINT CASE District- BHOJPUR

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1. Sabhapti Ram @ Shobha Pati Ram son of Late Moti Ram.
 2. Shanti Devi Wife of Sabhapati Ram
 3. Chandan Ram son of Sabhapati Ram @ Shabhapati Ram
 4. Binod Rm son of Late Ram Adalat Ram. All are resident of village + post-Chandi, police Station- Chapokhari, District- Bhojpur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Vijay Kumar Gupta Son of Late Ranglal Sah, Resident of Village + post-Chandi, Police Station- Chapokhari, District- Bhojpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Neeraj Kumar @ Sanidh, Advocate
Satyendra Narayan Singh Mr. Baidyanath Thakur, Advocate
For the Opposite Party/s No. 2 : Mr. Santosh Kumar Sinha, Advocate 4
For the State : Mr. S. Dayal, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

4 21-07-2015 Heard learned counsel for the petitioners as well as

learned A.P.P. for the State.

Petitioners, who were originally figured as an accused in

Complaint case No. 319 (C)/ 2011 filed by the Opposite Party

No. 2, were discharged by the learned Judicial Magistrate 1st

Class, Bhojpur, Ara under guise of Section 245 (2) of the Code of



Criminal Procedure vide order dated 06.05.2014 against which the Opposite Party No. 2/ Complainant preferred Cr. Revision No. 105/2014, before the learned Sessions Judge, Bhojpur which has been allowed vide order dated 28.02.2015 by the Addl. Sessions Judge- III have challenged the same under present petition.

After conjoint reading of both the orders, it is apparent that during course of examination of witnesses before charge, a petition for discharge was filed on 16.01.2014. Till then, only complainant was examined before charge. Because of the fact that petitioners/accused have claimed to be owner of the land and the dismissal of T.S. No. 63/93 filed by the Complainant and further, collected the material on its own persuaded the learned Magistrate to follow the provision having under Sub Section 2 of Section 245 of the Cr. P.C. and discharged the petitioners.



Learned Revisional Court did not keep into the power so entrusted in terms of Sub Section (2) of Section 245 of the Cr. P.C. and instead thereof, identified the procedural lapses, depriving the complainant to examine all the witnesses in terms of Section 244 of the Code of Criminal Procedure and on account thereof, set aside the order impugned against which accused/petitioners have invoked the inherent power of the Court in terms of Section 482 of the Code of Criminal Procedure by filing instant petition.

It has been submitted on behalf of the petitioners that Revisional Court had misconstrued the statutory provisions having incorporated under procedural law, wherein, malicious as well as vexatious prosecution has been discouraged. To support the same, relied upon **State of Bihar, Appellant V. Baidnath Prasad alias**



Baidyanath Shah and another, Respondents reported in
A.I.R., 2002 S.C. 64, more particularly **paragraph-7,** it has
been submitted that Hon'ble Apex Court had perceived the power
of the Trial Court in terms of Sub section(2) of Section 245 of the
Cr. P.C. and laid down that Trial Court happens to be within its
competence to discharge at any stage of the trial. The only criteria
for application of Sub section 2 happens to be charged to be the
ground less. In the back ground of having armed with the
aforesaid legal principle, it has been submitted on behalf of the
petitioner that learned Trial Court had perceived the malicious
prosecution, coupled with an admission on the part of complainant
himself regarding nature of dispute amongst the parties relating to
land under reference.

It has been urged that it is apparent from the Complaint



petition itself that settlement happens to be in favour of the petitioners relating to land under dispute which was questioned at the behest of complainant under a Title suit No. 63/93, which met an unnatural death, by having dismissed for default which never been restored, therefore, petitioners' status over the land under question is find out of controversy. Petitioners' recognition, as a holder of the land, has now become perfect. That being so, the learned Magistrate had rightly passed the order of discharge.

At the other end, learned counsel for the Opposite Party No. 2 has submitted that petitioners are the victim of own fault who suppressed the real fact. In spite of having specific disclosure in the order of Revisional Court, regarding presence of T.S. No. 1241/2013 at the instance of complainant/ Opposite Party No. 2, petitioners have not controverted. It has further been

submitted that T. S. No. 63/93 filed on different footing.

Subsequently, thereat, when the complaint found that settlement of land in favour of petitioners/ accused was result of mal practice as well as collusiveness, without adopting legal norms, on account thereof T.S. No. 1241/2013 has been filed challenging the same.

Furthermore, presence of T.S. No. 1241/2013 with the aforesaid reliefs have not been challenged nor controverted by the petitioners.

Apart from this, it has also been submitted that application of 245 (2) Cr. P.C. should not be throttle the complaint's case, when witnesses are yet to be examined, documents are yet to be filed and exhibited. Therefore, the learned revisional Court right struck down the order passed by the learned lower Court on that score.

In the aforesaid background, it has been submitted that ambit & scope of Section 245 (2) Cr. P.C. was misinterpreted by the learned lower Court while discharging the petitioners.

After going through the order of the learned Magistrate, it is apparent that learned Magistrate had called for the report from the D.C.L.R. as well as C.O. while the matter was pending for evidence before charge and passed the order of discharge without affording an opportunity to the complainant on that score. With regard to competency of such step adopted by the learned lower Court, it has been submitted on behalf of the learned counsel for the petitioners that there happens to be the some sort of inherent power vested to the Subordinate Court and under garb of such inherent power, the learned Magistrate rightly called for the aforesaid reports and put reliance there upon because it happens to

be the public document.

The trial of cases is to be governed by the procedure laid down under Criminal procedure Code. Save and except, Section 311 of the Cr. P.C., no other Section empowered the Court, more particularly supporting Court to collect the evidence, that too for just decision of case. No such event is visualizing from the order. Furthermore, the kind of procedure lapses have been found by the Revisional Court in the order passed by the learned Magistrate and on account thereof, the order of the Magistrate has been set aside. Exercise of power should not be in arbitrary manner, throttling either of the parties. The party should be given ample opportunity to place its case. Furthermore, there happens to be no scope for learned Magistrate to call for report from the D.C.L.R. as well as C.O. which was not at all public document. On its own at the stage

of evidence before charge and invoke wise manner in case so called for, should have given an opportunity to the complainant to rebut the same.

After going through the order passed by the learned Revisional Court, it is apparent that there is no scope for interference. As such, instant petition is found merit less, and is accordingly rejected. However, it will not deprive of the right of petitioners to pray for discharge in case they so feel.

(Aditya Kumar Trivedi, J)

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