

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.15180 of 2014

Arising Out of PS.Case No. -1447 Year- 2011 Thana -NALANDA COMPLAINT CASE District-
NALANDA (BIHARSHARIFF)

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Shahzad Kalam, Son of Late Abdul Kalam, Assistant Secretary No. 2 (Nayab Doem) Sogara Wakf Estate, Wakf No.-2, Resident of Mohalla – Laheri, Biharsharif, Nalanda, Resident of Mohalla- Sherpur, P.S.- Biharsarif, District - Nalanda.

.... Petitioner

Versus

1. The State of Bihar
2. Md. Faisal @ Munna Siddiqui, Son Of Md. Aslam, Ex-Mutawalli Sogara Wakf Estate Laheri, Resident of Mohalla - Kharadi, P.S.- Laheri, Town Biharsarif, District - Nalanda.
3. Javed Hasan Khan Suri, Son of Late Eliyas Hasan Khan Suri, Dy. Secretary 1st, Nayab Auwal of Sogra Wakf Estate Laheri, Resident of Mohalla - Sherpur, P.S.- Biharsarif, District - Nalanda.
4. Naiyar Soharwardi, Son Of Late Master Saiyad Zakkiuddin, Dy. Secretary, II Nayab Doam, Sogara Wakf Estate Laheri, Resident of Mohalla - Laheri, P.S. - Laheri, District- Nalanda.
5. Sajjad Qadari, Son of Ziya Qadari, Clerk Sogra Wakf Estate Laheri, Resident of Mohalla - Katra Sabilper, P.S. - Laheri, District - Nalanda.

.... Opposite Parties

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Appearance :

For the Petitioner/s	:	Mr. Mohammad Sufyon, Advocate Mr. Thakur Brajesh Singh, Advocate
For the O.P. No. 2	:	Mr. Hansraj, Advocate
For the O.P. Nos. 3 & 4	:	Mr. Md. Kalamuddin, Advocate Mr. Shashi Kumar, Advocate
For the State	:	Mr. Binod Kumar No. II, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 05-04-2016

Heard learned counsel for the petitioner and learned
counsel for the State.

This application has been filed for quashing the order
dated 20.01.2014 passed by the learned Sessions Judge, Nalanda,
Biharsharif in Criminal Revision No. 310 of 2013 by which he has

affirmed the order dated 30.05.2013 passed by Sri Bipin Kumar, Judicial Magistrate 1st Class, Biharsharif, Nalanda in Complaint Case No. 1447C of 2011, Trial No.3145 of 2013, by which he has dismissed the complaint petition under Section 203 of the Code of Criminal Procedure.

The prosecution case, as alleged in the complaint petition by the complainant Shahzad Kalam (Nayab Doem) of Sogara Wakf Estate, Wakf No. 2, Nalanda at Biharsharif is that the then Mutawalli, Md. Faisal @ Munna Siddiqui of the said Wakf under a criminal conspiracy has misappropriated the property of the Institution along with other accused persons. It is further alleged that the opposite party no.2 cut the Seesam tree which was standing in the premises of the old hostel of the Institution and distributed among all the accused persons. It is further alleged that in auction the opposite party no. 2 sold the old bricks of the old hostel for a consideration of Rs. 1,00,000/- but did not deposit the same in the name of Sogara Wakf Estate. It has further been alleged that the general public of Muslim community got the accused persons released from their post through the Bihar State Sunni Wakf Board and even got money withdrawn after their removal from the post to the extent of Rs. 3,93,356/-. On the said complaint, the complainant was examined on solemn affirmation. The learned Magistrate after taking into consideration as



well as the material produced before him by both oral and documentary dismissed the complaint under Section 203 of the Code of Criminal Procedure. The allegation concerned with the property of Wakf under the Wakf Act. Section 33 (6) and Section 85 of the Wakf Act, 1995 provide sufficient safeguards for act done under the Wakf Act. Section 33 of the Wakf Act, 1995 describes for handling of the matter agitated by the complainant in the complaint petition. The learned Magistrate after taking into consideration Sections 33 and 85 of the Wakf Act, 1995 regarding the bar of jurisdiction to the Civil Courts, dismissed the complaint on the ground that this is not an appropriate Court to deal with the matter as the mechanism provided under the Wakf Act so did not make out sufficient ground to proceed further. The Sessions Judge, Nalanda also dismissed the revision petition preferred against the order rejecting the complaint under Section 203 of the Code of Criminal Procedure.

The learned counsel for the petitioner, however, challenged the order of the Revisional Court, by which has affirmed the order of the learned Magistrate on the sole ground that Section 85 of the Wakf Act bars the jurisdiction of Civil Court and it is not in dispute that only the jurisdiction of Civil Court has been barred but the jurisdiction of criminal Court has not been barred.

However, going through the allegation and taking into



consideration Section 33 of the Wakf Act, 1995, it is apparent that the Wakf Act has given the safeguard regarding the negligence on the part of the Mutawalli. Section 33(i) provides that *with a view to examining whether, by reason of any failure or negligence on the part of a mutawalli in the performance of his executive or administrative duties, any loss or damage has been caused to any wakf or wakf property, the Chief Executive Officer with the prior approval of the Board: either himself or any other person authorized by him in writing in his behalf, may inspect all movable and immovable properties, which are wakf properties, and all records, correspondences, plans, accounts and other documents relating thereto.* Hence, when the Wakf Act has provided the safeguard that act of Mutawalli will be looked into by the Chief Executive Officer with prior approval of the Board hence, neither any approval from the Board nor the complaint lodged by the Chief Executive Officer and hence, the safeguard provided not complied.

Hence, going into the order impugned, I find that the learned Magistrate has taken into consideration the provisions of the Wakf Act and has dismissed the complaint with reason. However, Section 203 of the Code of Criminal Procedure provides that *if, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any)*

under Section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.

Under the facts and circumstances of the case, the Magistrate having duly considered the statement of the complainant, the witnesses as also having considered the exhibits, formed an opinion that there is no sufficient ground for proceeding with the complaint and dismissed the same with reasons mentioned therein. Besides, the Court below also considered the provisions contained in Sections 33 and 85 of the Wakf Act, which is a special legislation with regard to wakf property. Hence, the Court below has indicating good reasons dismissed the complaint.

In the facts and circumstances of the case, I do not find any merit to interfere with the order impugned and hence, the petition is dismissed.

(Gopal Prasad, J)

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