

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.1742 of 2016

Arising Out of PS.Case No. -242 Year- 2011 Thana -AMARPUR District- BANKA

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1. Shiv Shankar Bhagat son of Late Jai Mangal Bhagat
 2. Rajesh Kumar Bhagat, son of Shiv Shankar Bhagat
 3. Basuki Bhagat, son of Jai Mangal Bhagat
 4. Nirmala Devi wife of Basuki Bhagat
 5. Asha Devi wife of Shiv Shankar Bhagat
 6. Ajeet Bhagat, son of Shiv Shankar Bhagat
 7. Ravi Kumar Bhagat, son of Shiv Shankar Bhagat
 8. Chandan Bhagat son of Shiv Shankar Bhagat
 9. Shiv Kumar Bhagat @ Munna son of Shiv Shankar Bhagat
- All are resident of Village & P.O.- Amarpur, P.S. Amarpur, District- Banka

.... Petitioners

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Brij Nandad Prasad
For the Opposite Party/s : Mr. Suresh Pd. Singh (App)

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

5 03-10-2016 Heard learned counsel for the petitioners and the

learned counsel for the State.

In this case, the petitioners are challenging the order of discharge dated 30.10.2015, where the court below has refused to discharge the petitioner with respect to Amarpur P.S. Case No. 242 of 2011(G. R. No. 1822 of 2011).

An F.I.R. has been lodged by the Anchal Adhikari, Amarpur, on the direction of the District Magistrate, Banka, inter alia stating that the land appertaining to Thana No. 390, Khata No. 96, Khasra No. 693, Area 1.42 Acres is a Gair

Majarua Aam Land where M/s M.J. & Sons Destelari Pvt. Ltd., is standing and as such company and Managing Director Shiv Kumar Bhagat have committed offence under Sections 467, 468, 471 and 420/34 of the Indian Penal Code.

Nutshell, the allegation has been made that they are in possession of the Gair Majarua Aam land which could not be settled in any manner, where as he is in the present petitioners have purchased the land and have claimed legal possession so much so that they have constructed the factory in the said land. In the body of the petition, it has been stated that the land in question was originally in the right title of the Shital Prasad Bhagat after his death, the land was put to the partition among the family members, which came in physical possession of the petitioners no. 1 to 8 and they sold land to petitioner no. 9 and who constructed the factory, crores of rupees has been invested for its establishment so much so that the Government officials have granted license for manufacturing the spirit including the factory inspector has made inspection, has also issued the license under the Factories Act. Time to time, they have visited the premises and made necessary inspection of the factory. It further appears that the State Government must have been receiving the taxes also arising from the manufacturing of



liquor or spirit. Admittedly, the land are in possession of these petitioners since long, the claim has been made that the alleged land has been recorded as Gair Majarua Aam which can be settled with any person subject to the change of nature of land. The character of the land has been changed in course of time over which the factory has already established.

In the counter affidavit, learned counsel for the State has taken a plea of illegal encroachment of the land and claimed that in Paragraph-13, the State has taken over land in question Gair Majarua Aam Pokhara. It cannot be claimed by petitioners on the basis of illegal encroachment by doing without any document, even the petitioners have built the factory on that land, he must be ordered to remove the construction and in this view of the matter, physical possession of these petitioners is illegal itself shows that it is completely of civil dispute and cannot be settled by filing a criminal case. The criminal case cannot be used as weapon to harass the other side, especially, by the State Agency to the normal citizen that too who has already invested a lot of money in the establishment of the Destelari and from there, the State has also received huge amount of the taxes. The nature of the dispute in the opinion of this Court is completely out and out civil and this cannot be

decided in a criminal case but it can very much be decided in a civil proceeding.

In such view of the matter, the order of discharge dated 30.10.2015 is hereby set aside and consequent upon that the entire proceeding of P.S. Case No. 242 of 2011 and G.R. No. 1822 of 2011 for offences under Sections 467, 468, 471 and 420/34 of the Indian Penal Code is hereby quashed.

Accordingly, this application is allowed.

(Shivaji Pandey, J)

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