

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.32074 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District- WESTCHAMPARAN(BETTIAH)

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Arun Yagnik, Son of Late Durga Shankar Yagnik, Resident of Mohalla - Rajguru Chouk Bettiah, Police Station - Bettiah Town, District - West Champaran.

.... Petitioner.

Versus

1. The State of Bihar.
2. Rameshwar Yagnik, Son of Late Vindhyawasini Prasad Yagnik, Resident of Mohalla - Rajguru Chouk, Madhwi Villa, Bettiah, Police Station - Bettiah Town, District - West Champaran, at Present Resident of Village Chirihani, Police Station - Matiyaria, District - West Champaran.

.... Opposite Parties.

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Appearance :

For the Petitioner : M/s. B.N. Mishra and Brij Kishor Mishra,
Advocates.

For the State : Mr. Abhay Kumar No.1, A.P.P.

For the Opposite Party No.2 : Mr. Sanjeev Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT

Date: 15-09-2017

This application, under Section 482 of the Code of Criminal Procedure, is directed against the order dated 22.04.2013 passed in Complaint Case No.2606C of 2011/Trial No.2349 of 2013, whereunder the court of the Judicial Magistrate, First Class, West Champaran at Bettiah, summoned all the 23 accused, named in the complaint petition, including the petitioner under Section 204 of the Code of Criminal Procedure, finding prima facie case under Sections 447, 504 and 506/34 of the Indian Penal Code and also prima facie case under Section 418 and 423/34 of the Indian Penal Code against



10 accused, namely, Arun Yagnik (petitioner), Harihar Prasad, Shankar Mahto, Lalji Prasad, Puspa Mehta, Dwarika Nath, Ajay Kumar, Mungerilal, Khobhari Rai and Ramchandra Prasad.

2. Heard learned counsel for the petitioner and the learned A.P.P. for the State and also the learned counsel for the opposite party no.2.

3. The facts leading to this application are that on the basis of the written report of the complainant/opposite party no.2 Rameshwar Yagnik, Matiyaria P.S. Case No.26 of 2010 under Sections 467, 468, 469, 470, 471, 420 and 120(B)/34 of the Indian Penal Code was instituted against 23 persons including the petitioner. It is alleged in the F.I.R. by the complainant/opposite party no.2 that his agricultural land is situated in village-Charihani, which was allotted in his share in Partition Suit No.159 of 1949. He recently came to know that Arun Yagnik (petitioner), son of his step brother Late Durga Shankar Yagnik, sold the land of his share to nine persons on 15.05.2010. Thereafter, he went to his agricultural farm and saw the petitioner alongwith his man Pramod Tiwary with some villagers and several unknown there, who were instigating to purchase the land. While the complainant/opposite party no.2 tried to convince the people present there that the land has been allotted in his share on partition and the proceeding under Section 145 of the Code of



Criminal Procedure is going on and the property is also attached under Section 146 of the Code of Criminal Procedure, apart from that, Title Suit No.72 of 2010 is also filed by him, his nephew Anup Yagnik and the petitioner also accepted in Title Suit No.33 of 2008 that after partition, all parties are in possession according to their share. But, in spite of that, the petitioner and Pramod Tiwary threatened him. Thereafter, he alongwith his nephew Anup Yagnik, Pundeo Yadav, Kanhai Yadav and Nandlal Yadav fled away from there.

On investigation, the police submitted the final form arriving at the conclusion that dispute is of civil in nature. Thereafter, the protest petition of the complainant/opposite party no.2 was registered as Complaint Case No.2606C of 2011 and, on enquiry, the learned Judicial Magistrate, First Class, West Champaran at Bettiah, summoned the 23 persons, named in the complaint petition, including the petitioner under Section 204 of the Code of Criminal Procedure through the impugned order dated 22.04.2013, finding prima facie case against them under the aforesaid Sections.

4. Learned counsel for the petitioner submits that, in fact, the petitioner is the son of the step brother of the complainant/opposite party no.2 and the complainant/opposite party no.2 has also filed Title Suit No.72 of 2010 for declaration of his right and title in respect to the land in dispute and he had also filed an



injunction application under Order XXXIX Rule 1 of the Code of Civil Procedure restraining the accused-petitioner and others not to transfer the land to any one but his injunction application was dismissed on 23.05.2011.

5. Learned counsel for the complainant/opposite party no.2 submits that there is no illegality in the impugned order but has not denied about filing of the Title Suit No.72 of 2010 by the complainant/opposite party no.2 and rejecting his injunction application filed under Order XXXIX Rule 1 of the Code of Civil Procedure restraining the accused-petitioner and others, who are defendants in the suit.

6. The dispute, as disclosed in the complaint petition, appears to be civil in nature. As such, continuance of the criminal proceeding against the petitioner and the other accused, named in the complaint petition, on summoning them through the impugned order under Section 204 of the Code of Criminal Procedure in the aforesaid complaint case would be abuse of the process of the court.

7. Accordingly, this application is allowed and the impugned order dated 22.04.2013 passed in Complaint Case No.2606C of 2011/Trial No.2349 of 2013 by the court of the Judicial Magistrate, First Class, West Champaran at Bettiah, and the entire criminal proceeding, arising out of the aforesaid complaint case, are



hereby quashed.

(Rajendra Kumar Mishra, J)

P.S./-

AFR/NAFR	NAFR
CAV DATE	NA
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