

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.34260 of 2014

Arising Out of PS.Case No. -7 Year- 2013 Thana -BUNIADGANJ District- GAYA

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Indradeo Vidrohi Son of Ram Saran Mahto, resident of village-Khanjahanpur,
Police Station-Buniyadganj, District-Gaya. Petitioner/s

Versus

1. The State of Bihar.
2. Ran Vijay Singh @ Ran Vijay Prasad Singh Son of Late Ram Adhik Singh,
resident of village-Manpur Gopal Pandey Gali, Police Station-Buniyadganj,
District-Gaya. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Manish Kumar No. 2, Advocate
For the O.P. No. 2 : M/s Ram Kishore Singh and
Amit Kumar Singh, Advocates
For the State : Mr. Akhileshwar Dayal, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 11-09-2017

1. Heard the parties and perused the record.
2. This criminal miscellaneous application under section 482 of the Code of Criminal Procedure has been filed to quash the order dated 23rd April 2014 passed by the learned Judicial Magistrate 1st Class, Gaya in Buniyadganj Police Station Case No. 07 of 2013 (Trial No. 3455 of 2014) whereby and whereunder the learned Magistrate finding *prima facie* case against the petitioner, took cognizance for the offence under section 384 of the Indian Penal Code.
3. The opposite party no. 2 lodged an FIR with the S.H.O. of Buniyadganj Police Station alleging therein that on



03.02.2013 when he was working on his land, bearing plot nos. 847, 848 and 849, this petitioner and two others came on a motor cycle and told him that if he wants to work on the said land, he will have to give a 'Bolero' vehicle worth Rs.5,00,000/-. The informant protested whereupon the petitioner stopped his work, took an amount of Rs.2,200/- from the pocket of his Munshi. The matter was enquired and Police submitted a report against the petitioner and two unknown for the offence under section 386/34 of the Indian Penal Code. The learned Magistrate, on the basis of police report, took cognizance of offence against the petitioner.

4. The learned counsel for the petitioner submits that the petitioner is a social worker and is regularly fighting against the land grabber of the locality. The informant claims that he was working on the land, which belongs to a Math known as Mansingh Garh. The informant and his men have taken possession over the said land, for which, the petitioner filed C.W.J.C. No. 20 of 2011 before this Court against the State of Bihar and others in which the present informant- Ran Vijay Singh was impleaded as Respondent no. 10. The said writ petition was filed by way of Public Interest Litigation for a direction to the Revenue Authorities including the Block Development Officer, Manpur and the Circle Officer, Khizarsarai to take steps for removal of encroachment from the land measuring 29 acres. The said writ



petition was disposed of by this Court on 10.01.2011 in presence of both the parties and the petitioner was given liberty to approach the Collector under the Land Encroachment Act with full details of the encroachment and the concerned Authorities were directed to get an inquiry conducted and take steps for removal of the encroachment if needed. In this regard, one more C.W.J.C. No. 20564 of 2012 (Annexure-2) was filed before this Court by Lord Mahaveer Jee Gauri Shankar and others Deities against the present informant and others. As per order dated 05.11.2012 (Annexure-3), the present informant and 06 others were directed to maintain status-quo over the land in question. This petitioner, suspecting encroachment by the present informant, filed an Informatory Application No. 319 of 2013 (Annexure-4) in the court of learned Chief Judicial Magistrate, Gaya on 04.02.2013 against the informant and 05 others. The Chairman of Bihar State Religious Trusts Broad, as per letter dated 09.01.2013 (Annexure-5), has also directed the Sub-Divisional Magistrate, Gaya to submit a report as regards encroachment if any made by the land grabber. The learned counsel referred newspaper clippings to show that the local people were raising protest against the land grabber. A supplementary counter affidavit along with a copy of order dated 26.03.2015 passed in Encroachment Appeal Case No. 09 of 2013 has been filed wherein it has been submitted that for the said



encroachment, as per direction of this Court passed in C.W.J.C. No. 20/2011, an encroachment proceeding was initiated, vide Encroachment Case No. 4/2012-13, but the Circle Officer issued notice for removal of encroachment with respect to only 8.08 acres land. The petitioner filed Encroachment Appeal Case No. 09 of 2013 for including the remaining land, which was encroached by the present informant. The learned counsel for the petitioner further submitted that the allegation of demand of a 'Bolero' vehicle as *Rangdari*, is vague and it has been levelled against the petitioner only to harass him, as he has been raising protest against the encroachment made by the informant and his men since the year 2010. The learned Magistrate without applying judicial mind, has taken cognizance in mechanical manner, which is not sustainable and is fit to be quashed.

5. On the other hand, the learned counsel for the opposite party no. 2 as well as learned Additional Public Prosecutor vehemently opposed the submission and submitted that the charge against the petitioner, has been framed and two witnesses have been examined and so, this criminal miscellaneous application has become infructuous and is fit to be dismissed.

6. On perusal of complaint petition, documents annexed with this criminal miscellaneous application, I find that the informant has alleged that on the day of occurrence, he was working over his



land by his J.C.B. Machine where the petitioner along with two others came and demanded a 'Bolero' vehicle worth Rs. 5,00,000/- for allowing him to work on the said land. Allegation appears vague. The informant although claimed the said land as his own, but no paper has been filed in support of his claim. From the annexures on record it appears that this petitioner is fighting with the informant for removal of encroachment since much before the present occurrence. He had filed a writ application bearing C.W.J.C. No. 20 of 2011 before this Court in which the present informant was impleaded as Respondent no. 10. There is specific allegation that the informant and his men grabbed several acres land belonging to the Deities. The plot, which is claimed by the informant, was also subject matter of writ petition filed by this petitioner and the Deities. The District Magistrate on the direction of this Court, got encroachment proceeding initiated against the informant and other land grabbers. A proceeding under section 144 Cr.PC. was also initiated between this petitioner and others. The documents, annexed with this criminal miscellaneous application, are unimpeachable and are sufficient to establish that the petitioner was fighting with the informant since much before the present offence. The criminal prosecution of this petitioner appears to be an abuse of process of Court.

7. In State of Haryana v. Bhajan Lal, it was, *inter alia*



observed as follows: (SCC pp. 378-79, 102): 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992 SC 604.

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code



except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly



attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

8. The informant has lodged this case after filing of series of cases by the petitioner and others much earlier to the present complaint case of the informant. In view of above facts, it is apparent that the informant has lodged this case only to wreak vengeance. The present case is squarely covered by the guidelines given by the Hon'ble Apex Court in above case.

9. In view of the discussion made above, the order dated 23rd April 2014 passed by the learned Judicial Magistrate 1st Class, Gaya in Buniyadganj Police Station Case No. 07 of 2013 as well as criminal prosecution of this petitioner on the basis of said order, is hereby quashed.

10. Accordingly, this criminal miscellaneous application is allowed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	AFR
CAV DATE	N/A
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