

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.19005 of 2012

Arising Out of PS.Case No. -0 Year- null Thana -null District- WESTCHAMPARAN(BETTIAH)

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1. Shobha Mishra W/O Krishna Mohan Mishra Resident Of Village- Pokhariya No.-355, P.S.- Shikarpur, District- West Champaran

2. Krishna Mohan Mishra W/O Late Mahesh Mishra Resident Of Village- Pokhariya No.-355, P.S.- Shikarpur, District- West Champaran

.... Petitioners

Versus

1. The State Of Bihar

2. Jhagaru Bhagat S/O Late Bachcha Bhagat R/O Village- Pokhariya No.-355, P..S- Shikarpur, Dist.- West Champaran.

.... Opposite Party/s

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Appearance :

For the Petitioners	:	Mr. Bimlesh Kumar Pandey, Advocate
For the State	:	Mr. Pradeep Narayan Kumar, A.P.P.
For O.P. No.2	:	Dr. Amrendra Kumar, Advocate
	:	Mr. Ravi S. Pankaj, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

C.A.V JUDGMENT

Date: 24-07-2017

This petition for quashing under Section 482 of the Code of Criminal Procedure is filed by petitioners challenging order taking cognizance dated 27.3.2012 passed by Mr. P.K. Shukla, Judicial Magistrate, 1st Class, Bettiah, West Champaran in Complaint Case No.1286(C) of 2011 (Trial No.1795 of 2012) whereby he has taken cognizance of the offence under Sections 323, 379 of Indian Penal Code and directed for issuance of summons to petitioners to stand trial in this case.

2. The complainant Jhagru Bhagat is neighbours of the both petitioners who are husband and wife. In complaint, allegations



levelled in brief is that on 12.6.2011 at 10.30 A.M., the accused persons standing at their door were abusing that villagers had ditched candidate of the village in Mukhiya Election and voted for candidate of another village as a result the candidate of our village Umesh Yadav lost the election. The complainant made protested for abusing all villagers then Krishna Mohan Mishra, one of the accused, pinned him down and made an attempt to strangulate him, also tore off cloths and committed theft of Rs.200/- from his pocket. Wife of complainant came to rescue her husband then Shobha Mishra, wife of accused Krishna Mohan Mishra holding her hair threw her down and committed theft of her nose pin.

3. Learned counsel appearing on behalf of the petitioners submitted that the petitioners and the complainant are next door neighbours. Petitioner no.2 Krishna Mohan Mishra filed a petition before Circle Officer, Narkatiyaganj, West Champaran for demarcation of his land as Jhagru Bhagat the complainant had encroached upon his land bearing Khata No.16, Khesra No.316 of Mouza Pokharya by keeping nad, khuta and cow dung. This petition was filed on 11.6.2011. In the said proceeding, the Circle Officer found encroachment on the land of the petitioners by Jhagru Bhagat the present complainant. On the petition filed by Krishna Mohan Mishra for demarcation of his land, Circle Officer, Narkatiyaganj



came at the spot for enquiry on 12.6.2011. The Circle Officer after enquiry left the place, immediately thereafter Jhagru Bhagat and his two sons assaulted him and also took away two bags of rice from his Verrandah. Krishna Mohan Mishra petitioner no.2 reported this matter to the police and Shikarpur P.S. Case No.212 of 2011 dated 13.6.2011 was registered against Jhagru Bhagat and his two sons under Sections 341, 323, 379, 506 and 34 of I.P.C. Jhagru Bhagat, after knowing the police case, lodged by Krishna Mohan Mishra this false complaint case relating to the alleged occurrence dated 12.6.2011 was filed on 20.6.2011. In the present complaint, it is also not mentioned that the complainant ever went to police station for lodging police case. The complainant has in fact lodged this false complaint case as a counter to Shikarpur P.S. Case No.212 of 2011 dated 13.6.2011 lodged by Krishna Mohan Mishra petitioner no.2. Moreover, the complainant had also encroached upon the land of petitioner no.2 as it is evident from the order dated 28.7.2011 passed by Circle Officer, Narkatiyaganj in Demarcation Case No.10-11-12, which is annexed with this petition. The complaint filed by Jhagru Bhagat is malicious in nature and in order to take personal vengeance the husband and wife have been roped in this case falsely.

4. Learned Additional Public Prosecutor and learned counsel for opposite party no.2 submitted that considering the



allegation in the complaint and statement of enquiry witnesses learned Magistrate has taken cognizance so there is no any illegality in the order.

5. Having considered rival submissions and on perusal of the record, this Court is of the view that the present complaint case has been filed maliciously. Earlier Shikarpur P.S. Case No.212 of 2011 for the alleged occurrence dated 12.6.2011 Krishna Mohan Mishra petitioner no.2 of this petition lodged the case against Jhagru Bhagat and his two sons Kamlesh Bhagat and Mahant Bhagat. The complainant in the present case is Jhagru Bhagat and out of two enquiry witnesses Kamlesh Bhagat is one of the witnesses. The instant complaint was filed on 20.6.2011 relating to the alleged occurrence dated 12.6.2011, there is no averment in the complaint that Jhagru Bhagat the complainant went to the police station for lodging case in this matter. Moreover, there is no cogent explanation given in the complaint for filing this case after lapse of eight days. However, the document filed by the petitioners, in particular the order dated 28.7.2011 passed in Demarcation Case No.10-11-12 shows that Jhagru Bhagat the complainant was found having encroached upon one and half door land of Khata No.16, Khesra No.316 situated in village Pokharya belonging to Krishna Mohan Mishra.

6. The allegation levelled in the complaint also appears



absurd for the reason that Krishna Mohan Mishra petitioner no.2 was not himself a candidate for fighting election of Mukhiya, the candidate from the village was one Umesh Yadav so why he would abuse villagers for not voting Umesh Yadav. Hence for the aforesaid reason, the present Complaint Case No.1286(C) of 2011 filed by Jhagru Bhagast appears malicious in nature and in order to satisfy his personal vengeance this complaint was filed. Therefore, continuation of the criminal proceeding in the present complaint case would be abuse of the process of the Court.

7. Accordingly, the impugned order of cognizance dated 27.3.2012 passed by Mr. P.K. Shukla, Judicial Magistrate 1st Class, Bettiah in Complaint Case No.1286(C) of 2011 as well as entire criminal proceeding in the said complaint case is hereby set aside.

8. The petition stands allowed.

(Arun Kumar, J)

N.H./-

AFR/NAFR	NAFR
CAV DATE	19-04-2017
Uploading Date	19-08-2017
Transmission Date	19-08-2017

