

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.18125 of 2012

Arising Out of PS.Case No. -79 Year- 2009 Thana -null District- KATIHAR

- =====
1. Ram Jatan Yadav, s/o Late Khargal Yadav,
 2. Hare Krishna Yadav, s/o Ram Jatan Yadav,
 3. Shyam Yadav, s/o late Ram Baran Yadav, &
 4. Bihari Yadav @ Ram Bihari Yadav, s/o late Ram Baran Yadav, all resident of village - Gwaltoli, P.S. - Kursela, Distt. - Katihar

.... Petitioner/s

Versus

1. The State of Bihar &
2. Sheo Narayan Thakur, son of Ghughar Thakur, resident of village- Indragram, P.S.-Kursela, District- Katihar.

.... Opposite Party/s

With

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Criminal Miscellaneous No. 45355 of 2012

Arising Out of PS.Case No. -79 Year- 2009 Thana -null District- KATIHAR

- =====
1. Manish Yadav, son of late Ram Rup Yadav,
 2. Ram Narayan Yadav, son of late Ram Rup Yadav,
 3. Sanjeev Yadav, son of Ram Narayan Yadav,
 4. Ram Briksh Yadav, son of late Muneshwari Yadav,
 5. Nago Yadav, son of late Ram Rup Yadav,
 6. Chet Narayan Yadav @ Chit Narayan Yadav, son of late Ram Rup Yadav,
 7. Ram Tahal Yadav, son of Ramanand Yadav,
 8. Sugarath Yadav, son of Ram Tahal Yadav,
 9. Vishwanath Yadav, son of late Shiv Narayan Yadav,
 10. Sagar Yadav @ Ram Sagar Yadav, son of Ram Tahal Yadav,
 11. Asha Devi, wife of Ram Sagar Yadav, resident of village- Gwaltoli, P.S. Kursela, District Katihar

.... Petitioner/s

Versus

1. The State of Bihar
2. Sheo Narayan Thakur, son of Ghughar Thakur, resident of village- Indragram, P.S. Kursela, District - Katihar

.... Opposite Party/s

With

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Criminal Miscellaneous No. 39676 of 2013

Arising Out of PS.Case No. -79 Year- 2009 Thana -KURSELA District- KATIHAR

- =====
1. Lal Bahadur Yadav, s/o late Muneshwar Yadav,
 2. Khardhari Yadav @ Kharagdhari Yadav, s/o late Ramroop Yadav,
 3. Prasadi Yadav, s/o late Parmeshwar Yadav,
 4. Babu Lal Yadav, s/o late Baleshwar Yadav,
 5. Manik Lal Yadav @ Manik Lal, s/o late Beni Yadav,
 6. Wakil Yadav, s/o Raghuni Yadav, all resident of village- Gwaltoli, P.S.-



Kursela, District- Katihar.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Sheo Narayan Thakur, s/o Ghughar Thakur, resident of village- Indragram, P.S. Kursela, District Katihar.

.... Opposite Party/s

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Appearance:

(In Cr. Misc. No.18125 of 2012)

For the Petitioner/s : Mr. Bimal Kumar, Advocate

For the Opposite Party/s : Mr. Surendra Kumar, APP
Mr. Mrityunjay Kumar, Advocate

(In Cr. Misc. No.45355 of 2012)

For the Petitioner/s : Mr. Bimal Kumar, Advocate

For the Opposite Party/s : Mr. Anil Kumar Singh, APP

(In Cr. Misc. No.39676 of 2013)

For the Petitioner/s : Mr. Bimal Kumar, Advocate

For the Opposite Party/s : Mr. Anant Kumar, APP
Mr. Mrityunjay Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 01-08-2017

1. These applications under Section 482 of the Code of Criminal Procedure have been filed for quashing the order dated 25.02.2011 passed by the Chief Judicial Magistrate, Katihar, in Kursela P.S. Case No.79 of 2009 by which the learned Magistrate has taken cognizance against the petitioners under Section(s) 323, 429, 379, 435, 436, 506/34 Indian Penal Code.

2. As per written report lodged by the informant and other persons, as named in the written report, they got the land by Govt. of Bihar through red card and the government gave them possession over the aforesaid land. They are cultivating the land and also constructed thatched houses. The accused persons, who are



muscleman and antisocial, had forcibly cut the crop cultivated by the informant and other accused persons, as named in the written report, and also set the thatched houses and *Machans* on fire. The accused person also assaulted and abused the informant and other persons and gave threat to kill them and looted away all the crops worth rupees one lac. The accused persons made demand of rupees ten thousand from each red card holders to give them possession over the land.

3. The police on the basis of written report instituted the First Information Report, investigated the case and thereafter submitted charge-sheet against the accused persons. Thereafter, the learned Magistrate after looking into the charge-sheet and the materials available in the case diary took cognizance against the accused persons (petitioners) for the offence under Section(s) 323, 429, 379, 435, 436, 506/34 Indian Penal Code.

4. Counsel for the petitioners has submitted that the land, in question, belonged to Kursela Estate and during Land Ceiling Proceeding, the land has been acquired by the State Government vide Gazette Notification No.1 dated 27.03.1984. Thereafter, the said land has been allotted to the red card holders including the present informant and other persons. The petitioners are *Bataidaar* of the said land and they are coming in possession over the same. Petitioner No.1 (Cr. Misc. No.18125 of 2012) had



filed a writ petition being CWJC No.2397 of 2009 in the Hon'ble Court, which was disposed of by order dated 20.02.2009 with a direction to the Collector, Katihar, to decide the matter and on that basis the Circle Officer, Kursela, opened land ceiling records numbered as 03/2001-02, 02/2001-02, 543/2009-10 and 544/2009-10 and sent the same to the DCLR, Katihar, for disposal of the matter. The DCLR, Katihar, found the petitioners were in possession of the land, in question, and on that basis the learned Additional Collector, Land Ceiling, vide his order dated 18.06.2010 decided the matter in favour of the petitioners in Miscellaneous Land Ceiling Case No. 543/2009-10 and 544/2009-10. The present Informant had also filed writ petition being CWJC No.14553 of 2011 challenging the aforesaid order of the Additional Collector. By filing Supplementary Affidavit in Cr. Misc. No.18125 of 2012, counsel for the petitioners has brought to the notice of this Court that the CWJC No.14553 of 2011, filed by the Informant-Opposite Party No.2 and others, has subsequently been withdrawn on 26.08.2016. The Hon'ble Court has given liberty to the Opposite Party No.2 and others to approach the Bihar Land Tribunal, Patna, for appropriate relief and thereafter the Opposite Party No.2 has filed a case before the Bihar Land Tribunal, Patna, which has been numbered as BLT Case No.1072 of 2016 in which petitioners have appeared through lawyer on the notice having



been issued to them.

5. Counsel for the petitioners has further submitted that even if the entire prosecution story is presumed to be true then also the matter is a purely civil dispute. All the petitioners are in possession over the land, in question, and only with a view to put pressure upon the petitioners the informant and others have lodged the present false case.

6. Learned APP has submitted that the learned Court below has passed the impugned order after looking into the materials available in the case diary and the allegation in the written report.

7. Having heard both sides and on perusal of all the materials available, this Court finds that present case has been filed by the informant and others, who are the red card holders with respect to the land, in question. They have been given possession of the land. They have constructed thatched houses, which were alleged to have been set on fire by the accused persons. There is also allegation in the written report that the accused persons looted the crops of the informant and other persons worth rupees one lac and made demand of rupees ten thousand in *Rangdari* from each red card holders to release the land in their favour.

8. The petitioners in paragraph 9 of the petitions have admitted that the informant and others are the red card holders



of the aforesaid land. It has been mentioned in para 9 that the land, in question, originally belonged to Kursela Estate and in the Land Ceiling Proceeding, the land was acquired by the State Government vide Gazette Notification No.1 dated 27.03.1984 and thereafter aforesaid land was allotted to the red card holders including the present informant and several other persons. The petitioners have claimed themselves to be the *Bataidaar* over the aforesaid land and on that basis they are in possession over the land, in question.

9. It has also been admitted that petitioners have filed CWJC No.2397 of 2009 in the Hon'ble Court, which was disposed of by order dated 20.02.2009 with a direction to the Collector, Katihar, and thereafter the Additional Collector by his order dated 18.06.2010 has found the petitioners in possession of the land, in question, vide Miscellaneous Land Ceiling Case No. 543/2009-10 and 544/2009-10. The aforesaid order had been challenged by the informant and others vide CWJC No.14553 of 2011, which has been subsequently withdrawn by the Opposite Party No.2 on 26.08.2016. The Hon'ble Court has given liberty to the Opposite Party No.2 and others to approach the Bihar Land Tribunal, Patna, for appropriate relief and thereafter the Opposite Party No.2 has filed a case before the Bihar Land Tribunal, Patna, which has been numbered as BLT Case No.1072 of 2016 in which petitioners



have appeared through lawyer on the notice having been issued to them.

10. As per admission of the petitioners, land, in question, has been allotted to red card holders including the present Informant and several others after being acquired by the State Government vide Gazette Notification No.1 dated 27.03.1984 in the Land Ceiling Proceeding.

11. The Hon'ble Supreme Court in the case of *Md. Ibrahim and others Vs. State of Bihar and another* reported in *(2009) 8 SCC 751* has held that there is growing tendency of complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurize parties to settle civil disputes. But at the same, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes.

12. Similar view has taken by the Hon'ble Supreme Court in the case of *Indian Oil Corporation Vs. NEPC India Ltd. and others* reported in *(2006) 6 SCC 736*.



13. In the instant case, on the basis of submission made by the petitioners and the allegation made in the written report, though it seems that civil dispute is pending between the parties, but at the same time it also appears that the allegation levelled against them contains the criminal offence. There is allegation in the written report that accused persons (petitioners) looted away the crop of the informant and others worth rupees one lac after assaulting them and set the thatched houses and *Machans* on fire. They also threatened them to kill and also demanded *Rangdari* of rupees ten thousand from each card holders to return the land. It is admitted that the informant and others are red card holders allotted by the Govt. of Bihar after the land, in question, which originally belonged to Kursela Estate, had been acquired by the Bihar Government from Kursela Estate vide Gazette Notification No.1 dated 27.03.1984 in the Land Ceiling Proceeding.

14. Therefore, in the facts and circumstances of the case, as stated above, and also relying on the judgment of the Hon'ble Supreme Court referred to above, this Court is of the view that the impugned order dated 25.02.2011 passed by the Chief Judicial Magistrate, Katihar, in Kursela P.S. Case No.79 of 2009 by which the learned Magistrate has taken cognizance against the petitioners under Section(s) 323, 429, 379, 435, 436, 506/34 Indian



Penal Code, does not suffer from any illegality.

15. All the three applications are, accordingly,
dismissed.

16. The learned Trial Court is directed to proceed
with the trial in accordance with law.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	30-06-2017
Uploading Date	01-08-2017
Transmission Date	01-08-2017

