

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.41433 of 2014

Arising Out of PS.Case No. -857 Year- 2012 Thana -MUNGER COMPLAINT CASE District-
MUNGER

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1. Ram Lagan Singh @ Muso Singh, Son of Late Bindeshwari Prasad Singh
2. Vivekanand Singh
3. Shyam Kishore Singh
Both sons of late Arti Prasad Singh
All Resident of Village-Indrukh, P.S.-Naya Ram Nagar, District-Munger.

.... Petitioner/s

Versus

1. The State of Bihar
2. Yogendra Mandal, S/o Late RAM Mandal, Resident of Village-Ranipur, P.S.-
Jamalpur, District-Munger.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mrs. Soni Shrivastava, Adv.

For the Opposite Party no.1 : Mr. Ram Anurag Singh, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
Date: 09-10-2017

Heard learned counsel for the petitioners and learned
APP for the State.

There is an office note saying that the notice has been
received personally by the opposite party no.2. The opposite party
no.2 has not entered appearance in this Court to oppose the present
application.

The petitioners, in the present case, are seeking
quashing of the order dated 10.10.2012 passed by learned S.D.J.M.,
Munger in Complaint Case No.857(C) of 2012 by which the learned
Magistrate has taken cognizance of the offences under Sections 467,



468, 471, 144, 504 and 506 of the Indian Penal Code.

Learned counsel for the petitioners submits that the three petitioners before this Court are the purchasers of land mentioned in schedule-III of the complaint petition. They have purchased the land from the accused nos.1 to 4 who are all legal heirs of late Raghu Mandal. The father of the informant and said Raghu Mandal were full brothers and from the complaint petition it will appear that Jamabandi of the land was created vide Jamabandi No.250 in the name of late Ram Mandal who happens to be the father of the informant. From the complaint itself it will appear that it is the case of the complainant that the land mentioned in schedule-II measuring area 1.59 decimals of which Jamabandi No.266 was created in the joint name of father of the informant and late Raghu Mandal were divided in two equal parts and both co-sharers were in their respective peaceful possession of the land which they were also cultivating. The allegation is that one branch of the co-sharers i.e. accused nos.1 to 4 who were legal heirs of Raghu Mandal sold the land mentioned in schedule-III which is part of schedule-I and II of the complaint petition vide sale deed no.2321 and 2329 respectively in favour of accused nos.7, 8 and 9 (present petitioners) on 7.6.2012, 4.7.2012 and 5.7.2012 respectively.

Learned counsel for the petitioners submits that a bare



reading of the complaint without adding or subtracting anything out of it would show that the whole dispute is with regard to sale deed executed by the legal heirs of one of the co-sharers Raghu Mandal in whose name also the Jamabandi No.266 was standing. It is not the case of the complainant that the sale deed was executed by forging his signature rather the case is that his co-sharers sold the land in conspiracy and transferred the land of the Mauza Indrarukh Jamabandi No.266 beyond the share of Raghu Mandal. Learned counsel also submits that allegation of threat as mentioned in the complaint petition is not against the present petitioners.

Learned APP representing the State has accepted the factual position as appearing from the complaint petition, though he opposed the prayer for setting aside the impugned order.

This Court has perused the complaint petition and is satisfied that this is out and out a civil dispute, a reading of the entire complaint without adding or subtracting anything out of it gives a clear impression to this Court that a civil dispute has been given colour of criminal prosecution. In the case of **Indra Mohan Goswami &Anr. Vs. State of Uttaranchal & Ors. reported in 2007(12) SCC 1** the Hon'ble Supreme Court has dealt with similar matter where the Court has taken note of the circumstances where civil proceedings are converted into a criminal case and has observed as under in paragraph



23 and 24 of the said judgment:

“23. This court in a number of cases has laid down the scope and ambit of courts powers under section 482 Cr.P.C. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under section 482 Cr.P.C. can be exercised:

- (i) to give effect to an order under the Code;*
- (ii) to prevent abuse of the process of court, and*
- (iii) to otherwise secure the ends of justice.*

24. Inherent powers under section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute.”

Considering the entire material available on the record particularly the statements made in the complaint petition and the nature of the case, this Court comes to a conclusion that it is a case of



civil dispute and continuance of the same in the court below would only be an abuse of the process of the court. The order taking cognizance and issuance of summons in so far as it relates to the present petitioners is hereby set aside.

The application is allowed to the extent indicated above.

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	
CAV DATE	
Uploading Date	11.10.2017
Transmission Date	11.10.2017

