

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.40939 of 2014

Arising Out of PS.Case No. -120 Year- 2011 Thana -BHAGALPUR COMPLAINT CASE District-
BHAGALPUR

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1. Md. Shahbaz @ Md. Shahbaz Alam
2. Md. Sarwar @ Md. Sarwar Alam,
Both sons of Late Rajjak, Resident of Mohalla- Hussainabad, P.S.- Mojahidpur,
District- Bhagalpur
3. Md. Pappu @ Ghulam Sabbir @ Pappu son of Md. Sallo, Resident of Mohalla-
Shahjangi, P.S.- Habibpur, District- Bhagalpur

.... Petitioner/s

Versus

1. The State of Bihar
2. Md. Irshad Hussain, son of Late Md. Wajahat Hussain, Resident of Mohalla-
L.N. Singh Lane Nathnagar, Police Station- Nathnagar, District- Bhagalpur

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Md. Najmul Hoda, Adv.

For the Opposite Party no.1: Mr. Ramsevak Choudhary, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 13-09-2017

Heard learned counsel for the petitioners and learned
APP for the State. No one appears for the opposite party no.2.

2. Learned counsel for the petitioners submits that the
petitioners are seeking quashing of the order dated 24.06.2014 by
which the learned Judicial Magistrate-1st Class, Bhagalpur has taken
cognizance in Complaint Case No. C 120 of 2011 under Sections 385,
504 and 506 of the Indian Penal Code. Learned counsel submits that,
in fact, the whole complaint is based on false and frivolous allegations
and with mala fide intention to usurp the land in question which



belongs to the petitioner nos.1 and 2. Learned counsel for the petitioner submits that a perusal of the certified copy of the sale deed enclosed as Annexure-2 to the present application would show that father of the petitioner nos.1 and 2 had purchased the land in question from one Bibi Gulshan in the year 2002 itself. Further, after purchase, the lands were recorded in the name of the father of petitioner nos.1 and 2 and Annexure-2/1 are the rent receipts showing payment of rent of the land in question to the State. Learned counsel further submits that much before the order taking cognizance in the present case, the brother of the petitioner nos.1 and 2 had lodged an FIR giving rise to Habibpur P.S. Case No.4 of 2011 under Sections 341, 323, 379, 387 and 504/34 of Indian Penal Code against the present complainant-opposite party no.2. The said FIR is dated 13.02.2011, a copy of which has been brought on record by way of Annexure-3 to the present application. He further submits that accused no. 1-petitioner no. 3 has been falsely implicated because he happened to be ex-Mukhiya of the Panchayat was not supporting the complainant-Opposite Party No. 2 rather he was supporting the claim of petitioner no. 1 & 2. Submission is that the complainant-opposite party no.2 has filed the present complaint case only with an intention to grab the land which he claims to have purchased later on i.e. on 12.01.2011 which is at least nine years approximately from the date of purchase of land



by the father of petitioner nos.1 and 2. Thus, in sum and substance, submission is that this is a civil dispute between the parties which has been given a criminal colour. Learned counsel submits that the order taking cognizance is bad in law.

3. On the other hand, learned APP representing the State opposed the prayer for setting aside the order taking cognizance. He submits that the learned Magistrate has taken cognizance on the basis of the statements made in the complaint petition and the deposition of the witnesses under Section 202 Cr.P.C. and only on being prima facie satisfied cognizance has been taken under Sections 385, 504 and 506 of the Indian Penal Code. He submits that this Court should not interfere with the order taking cognizance.

4. This Court has considered the rival submissions. The materials available on the record clearly suggest that it is a case of land dispute. Annexure-2 and 2/1 are the sale deed and rent receipts which are in the name of father of petitioner nos.1 and 2. The sale deed is of the year 2002 whereas in the complaint petition the complainant-opposite party no.2 has alleged that the accused persons are demanding a sum of Rs.1 lac as rangdari tax for allowing the complainant-opposite party no.2 to come on the land. In the complaint petition, it is alleged in paragraph 5 that the complainant informed the accused persons that he had obtained registry of the land from the



land owner and thereupon the accused persons indulged in alleged act of abuse and assault. A reading of the complaint petition leaves no doubt in the mind of the Court that the allegation of demanding rangdari tax and abuse etc. are only ornamental allegations which have been leveled because of the dispute which has arisen due to purchase of the land in question by the complainant-opposite party no.2 sometimes in the year 2011. The petitioners are claiming the right, title and possession of the land by virtue of the sale deed and rent receipts. In the case of **Inder Mohan Goswami & Anr. Vs. State of Uttaranchal & Ors. reported in 2007(12) SCC 1**, the Hon'ble Apex Court has occasion to consider the scope and ambit of Section 482 Cr.P.C. when civil proceeding is given colour of the criminal proceeding. The relevant paragraph 24 of the judgment is quoted hereunder for ready reference:-

“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.”

5. The opposite party no.2 has chosen not to contest the present case. Submission of the learned APP for the State that the



order taking cognizance should not be interfered with does not appear to be correct. In view of the materials which are already available and not controverted by either the State or the opposite party no.2 apparently the dispute being a civil kind of dispute, this Court is of the opinion that the allegation of demand of rangdari tax and abuse etc. are not believable because the claim of the petitioner nos.1 and 2 is that this land was purchased by their father long back in the year 2002. Sale-deeds and rent receipts enclosed as Annexure-2 and Annexure-2/1 are credible documents which are uncontroverted. Thus, in the opinion of this Court, this is purely a civil dispute which has been given a criminal colour and continuation of the same would be an abuse of the process of the Court. The order taking cognizance and issuance of summons in the present case is, therefore, quashed.

6. The application is allowed.

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.09.2017
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