

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.22830 of 2011

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1. Binod Kumar Sinha, son of late Yadunandan Sahay
 2. Manoj Kumar Sinha, son of late Yadunandan Sahay,
Both resident of Plot No. B-57, Mitra Mandal Colony, Saket Bihar, Anisabad, P.O. Anisabad, P.S. Phulwarisharif, Distt. Patna.
 3. Chandeshwar Singh @ Chaneshar Singh, Police Officer, Central Intelligence Department, Sarpentise Road, Patna, resident of Mohalla Mitra Mandal Colony, Police Station Phulwarisharif, Distt. Patna.
 4. Shyam Sundar Singh, son of Chandeshwar Prasad Singh, resident of Mohalla Mitra Mandal Colony, Saket Bihar, Post Office Anisabad, P.S. Phulwarisharif, Distt. Patna.
 5. Akhileshwar Prasad, retired Executive Engineer, son of late Ramadhar Prasad, resident of Mohalla Mitra Mandal Colony, Saket Bihar, P.S. Phulwarisharif, Distt. Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Sunil Kumar @ Murari Lal Yadav, son of Ram Baran Rai @ Baharan Rai,
resident of Harni Chak, P.O. Anisabad, P.S. Phulwarisharif,

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Vijoy Kumar Sinha, Advocate. Mr. Dipak Kumar, Advocate
For the Opposite Party/s	:	Mr. Ashok Kumar Verma, Advocate. Mr. Pramod Kumar Sinha, Advocate.
For the State	:	Dr. Rabindra Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 15-05-2017

1. This application under Section 482 Cr. P.C. has been filed for quashing the order dated 17.3.2004 passed by the Judicial Magistrate, 1st Class, Patna, in Complaint Case No. 404(C) of 2004 by which the learned Magistrate has found *prima facie* case against the petitioners for the offence under Section 506 of the Indian Penal Code.



2. As per complaint petition, the opposite party No. 2 is owner of Plot No. 751, Khata No. 966, Area 61 decimal and 24 decimal of land in Khata No. 1417, Plot No. 757 and 37 decimal of land in Plot No. 753.

3. It is alleged that when the opposite party no. 2 started work of Contractor of boundary wall towards North of Plot No. 753, the petitioner No. 1 in conspiracy with other members filed a petition before Officer Incharge, Phulwarisharif Police Station, Patna, on which non F.I.R. No. 39 of 2003 was registered and construction work was stopped. Thereafter, on the report of Phulwarisharif Police Station, Proceeding under Section 107 Cr. P.C. was initiated against the opposite party No. 2 and his brother Anil Kumar and in due course, that Proceeding was dropped. It is further alleged that petitioner No. 1 got a false and fabricated report in his favour in collusion with Sri R.K. Upadhyay and submitted a report to Sub Divisional Magistrate, Sadar, Patna, upon which proceeding under Section 107 Cr. P.C. has been initiated against the opposite party No. 2. These petitioners did all these things only with a view to purchase the land of opposite party No. 2 at cheaper rate which caused mental tension and economic loss to the opposite party No. 2.

4. Heard learned counsel for the petitioner, learned counsel for the opposite party No. 2 and the learned counsel for the



State.

5. Learned counsel for the petitioner has submitted that it is a matter of pure civil dispute. The petitioners are purchasers of the land from the same Society and have constructed house in Plot No. 752 and they are living there. The Cooperative Society provided road for entry to the said plots which passes through West to East through Plot Nos. 751, 752, 753 and also through other Plots of the Society and said road being used by the petitioners and others. The opposite party No. 2 in order to create nuisance and unlawful obstruction to the petitioners dug a pond over Plot No. 751 which was lawfully used as the road by the petitioners and public at large since the date of purchase.

6. The counsel for the opposite party No. 2 has submitted that due to filing of Proceeding under Section 107 Cr. P.C. as well as under Section 133 Cr. P.C., he has been put to mental tension as well as economic loss.

7. Counsel for the petitioner has submitted that at present the proceedings initiated under Section 107 Cr. P.C. as well as under Section 133 Cr. P.C. have been dropped. This fact has not been denied by opposite party No. 2.

8. Counsel for the petitioner has further submitted that earlier complaint filed by opposite party No. 2 against these



petitioners in Complaint Case No. 520(C) of 2003 was quashed by a coordinate Bench of this Court vide Judgment dated 7.7.2010 passed in Cr. Misc. No. 5215 of 2004.

9. From the nature of allegation made in the complaint petition, this Court finds that the instant case has been filed by opposite party No. 2 just to settle the score on account of obstruction raised by these petitioners for constructing boundary wall over the land which will cause obstruction in the general road.

10. The Hon'ble Supreme Court in the case of ***Bhajan Lal Vrs. State of Haryana (1992 SCC (Cri) 426)*** has laid down the parameters for the courts for exercising its jurisdiction under Section 482 Cr. P.C. and one of them is that if the court finds that any prosecution has been embarked upon with malicious intent, the same be considered an abuse of the process of court.

11. In such circumstances, this Court is of the view that continuance of this Criminal Proceeding against these petitioners is abuse of the process of court.

12. Accordingly, the order dated 17.3.2004 passed by the Judicial Magistrate, 1st Class, Patna, in Complaint Case No. 404(C) of 2004 by which the learned Magistrate has found *prima facie* case against the petitioners for the offence under Section 506 of the Indian Penal Code along with entire Criminal Proceeding against



the petitioners, is hereby quashed.

13. This Criminal Miscellaneous application is allowed.

(Sanjay Priya, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A
Uploading Date	22,05.2017
Transmission Date	22,05.2017

