

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.34484 of 2013

Arising Out of PS.Case No. -301 Year- 2009 Thana -SARAN COMPLAINT CASE District-
SARAN

- =====
1. Birendra Prasad Verma Son Of Late Baidya Nath Prasad Verma
Resident Of Mohalla Ratanpura (Near Dharmanathji Temple), Town
Chapra, P.S. Bhagwan Bazar, District Saran.
 2. Braj Mohan Prasad Verma Son Of Late Baidya Nath Prasad Verma
Resident Of Mohalla Ratanpura (Near Dharmanathji Temple), Town
Chapra, P.S. Bhagwan Bazar, District Saran.
 3. Vijay Krishna Verma Son Of Late Vishwanath Prasad Verma Resident
Of Mohalla Ratanpura (Near Dharmanathji Temple), Town Chapra, P.S.
Bhagwan Bazar, District Saran.
 4. Dhurkheli Mahto.
 5. Mohar Mahto
Both sons of Late Chandrika Mahto
 6. Tuntun Mahto, Son of Late Pujan Mahto
Petitioner Nos. 4 to 6 are residents of Mohalla- Ratanpura (Bin Toli
Pokhara) Town : Chapra, P.S. Chapra Mufassil, District- Saran.

.... Petitioner/s

Versus

State of Bihar & Anr

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Nagendra Rai
Mr. Navin Nikunj
For the Opposite Party/s : Mr. Zainul Abedin(App)

=====

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

3 12-01-2017 Heard the parties.

By way of the present application preferred under Section 482 of the Code of Criminal Procedure, the petitioner seeks quashing of the order dated 30.03.2011 passed by Mr. Piyush Kumar Srivastava, learned Judicial Magistrate, Barh, in Complaint Case No. 301/2009, by which finding *prima facie* case under Section 426 of the I.P.C. ordered for process against petitioners for the offences punishable under Sections 426 of the Indian Penal Code.

Case of the prosecution in brief is that on 03.01.2009, the accused persons/petitioners armed with different weapons came to



the field and destroyed the wheat crop worth Rs. 25,000/- cultivated by the complainant. When the complainant opposed, the petitioners started abusing him and threatened to stay away from this place and made firing in the air. Further case of the prosecution is that on 27.01.2009, petitioner nos. 1 to 3 encircled the complainant near Chapra railway station and assaulted him by means of fists and slaps and threatened the complainant that if he files any case against the petitioners, he will have to face dire consequences. Subsequently, the complainant filed complaint case bearing Complaint Case No. 301/2009 for the offences punishable under Sections 147, 148, 323, 427, 341 and 379 of the I.P.C.

The Court below after enquiry *prima facie* found the allegation true, issued processes against the petitioners under Section 426 of the Indian Penal Code, against which the present quashing application has been filed.

It has been submitted on behalf of the petitioners that there is a land dispute between the parties and earlier to filing of this case, petitioner no. 2 has filed a complaint case bearing Complaint Case No. 2124 of 2008 before the CJM, Chapra against the complainant in the present case, in which cognizance has already been taken by the learned Court below. It has further been submitted that the Plot Nos. 127 and 128 pertaining to raiyat khata No. 305, situated in Mohalla-Ratanpura, P.S. Chapra Mufassil and the total land in this Khata is 4 Bigha 15 Katha and 14 Dhur, which was being allegedly cultivated by the complainant, earlier



belonged to Ram Narain Lal, Hem Narain and Kedar Nath, which was sold to the ancestors of petitioner Nos. 1 to 3 and one Nirmal Kumar Srivastava, grandson of Ram Narain Lal in collusion with the present Complainant has been alienating these lands to different persons having full knowledge of the sale deed of petitioner Nos. 1 to 3, for which petitioner no. 2 has filed the above mentioned case against the complainant and only to save his skin from earlier case, the complainant has filed the present frivolous case in retaliation. It has further been submitted that since the plots in question belonged to the petitioners, therefore there is no occasion for the petitioners to destroy the crops of the said land, hence the order issuing process under Section 426 of I.P.C, is not sustainable in the eyes of law and fit to be quashed.

Learned Additional Public Prosecutor for the State has submitted that only after careful consideration of materials collected during the course of investigation learned Court below has issued processes under Section 426 of the Indian Penal Code and as such there is no illegality and infirmity in the said order.

Having heard both sides, it appears from the perusal of the record including complaint petition and statements of witnesses recorded during enquiry as well as impugned order that the learned Magistrate perused the materials and considered the same and thereafter found *prima facie* case under Section 426 of the Indian Penal Code and issued process. It has been argued on behalf of the petitioners that no doubt there is a land dispute between the parties and before filing of the present case, the



petitioners had filed a complaint case against the complainant but these cannot be said to be a ground to challenge the order issuing process, when there is consistence evidence available on record to show a case under Section 426 of the I.P.C. against the petitioners.

It is well settled principle that when there is consistent evidence available on record, the same cannot be thrown out on the ground that the same is malafide and malicious proceeding.

In view of the above, I find no merit in this case, accordingly, the present application filed by the petitioners is dismissed.

(Vinod Kumar Sinha, J)

sunil/-

U		T	
---	--	---	--

