

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.42764 of 2013

Arising Out of PS.Case No. -129 Year- 2006 Thana -SC SC PS District-
VAISHALI(HAJIPUR)

- =====
1. Lalita Choubey W/O Late Kedar Choubey Resident Of Village-
Chauhatta, P.S- Town, Hajipur, District- Vaishali.
 2. Gita Choubey W/O Digvijay Choubey Resident Of Village-
Chauhatta, P.S- Town, Hajipur, District- Vaishali.
 3. Renu Choubey W/O Amrendra Choubey Resident Of Village-
Chauhatta, P.S- Town, Hajipur, District- Vaishali.
 4. Tannu Choubey S/O Digvijay Choubey Resident Of Village-
Chauhatta, P.S- Town, Hajipur, District- Vaishali.
 5. Sanni Choubey S/O Digvijay Choubey Resident Of Village-
Chauhatta, P.S- Town, Hajipur, District- Vaishali.
 6. Digvijay Choubey S/O Late Kedar Choubey Resident Of Village-
Chauhatta, P.S- Town, Hajipur, District- Vaishali.

.... Petitioners

Versus

1. The State Of Bihar
2. Laxman Bhagat S/O Late Parichan Paswan Resident Of Mohalla-
Minapur Near Of Naka No. 2, P.S- Town, Hajipur, District- Vaishali.

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Ranjit Kumar Thakur, Advocate
For the O.P. No. 2 : Mr. Awadhesh Kr. Singh, Advocate
For the State : Dr. Mayanand Jha, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 21-06-2017

Heard learned counsel for the petitioners,
learned counsel for the opposite party no. 2 and learned
Additional Public Prosecutor for the state.

2. The petitioners, in the present case, are seeking
quashing of the order taking cognizance dated
23.07.2012, passed by the Chief Judicial Magistrate,
Vaishali at Hajipur in connection with SC/ST P.S. Case No.
129/2006.



3. Learned counsel for the petitioners has placed the First Information Report and the evidences collected in course of investigation which were called for earlier by a bench of this Court, as also the documents brought on record and submitted that, on bare perusal of the same, it would show that the dispute between the informant and the petitioners cropped up over a piece of land bearing Khata No. 1010, Khesra No. 3075 measuring area 10 dhurs out of the total area of 5 Khata 8 dhurs owned and possessed by petitioner no. 1. The informant lodged the present case with a concocted and highly exaggerated allegations during pendency of Title Suit No. 35/2005 in order to grab the piece of land belonging to the petitioners.

4. Learned counsel for the petitioners submits that in fact the First Information Report was lodged during the pendency of the Title Suit no. 35/2005 pending in the Court of learned Sub-Judge-VII, Hazipur, in order to falsely implicate the petitioners. The informant alleged that these petitioners came upon the land which belonged to him and committed the assault and abused him, however, the fact remains that the informant was never in possession of the land. A sale-deed was allegedly taken by the wife of the younger brother of the informant which was



under challenge in the said Title Suit. In the Title Suit, despite service of notice wife of younger brother of the informant did not turn up to controvert the case of the plaintiff (petitioner no.1) and the same was already going on between the parties, further, the allegations that there was an assault or that the informant was abused, as envisaged under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "SC/ST Act, 1989") are not corroborated by any independent witness and from the materials available on record no *prima facie* case is made out under Sections 447, 341, 323, 427/34 of the Indian Penal Code read with Section 3(i)(x)(iv) & (v) of the SC/ST Act, 1989. Learned counsel for the petitioners further, referring to Annexure-5, submits that it is out and out a mala fide prosecution and is a counter blast of Vaishali Sadar P.S. Case No. 312/2006 dated 23.06.2006, lodged by petitioner no. 6 against Nagina Paswan and others under Sections 147, 148, 149, 447, 448, 323, 379, 427, 504 & 452 of the Indian Penal Code. Very next day the informant who is one of the brothers of the said Nagina Paswan has lodged this case in SC/ST Police Station with sole intention to prosecute the petitioners from pursuing the Title Suit No. 35/2005.



5. Learned counsel for the petitioners has also placed Annexure-4, which is a copy of the judgment rendered by learned Sub-Judge-VII, Hajipur at Vaishali on 31st January, 2011, in Title Suit No. 35/2005 (Most. Lalita Choubey Vs. Pramod Kumar and others). In the said Title Suit, Most. Lalita Choubey, who is petitioner no. 1 in the present case, sought a declaration that the sale deed dated 12.10.2004, 25.11.2004 and 12.04.2005 executed in favour of the defendant second party in respect of the land bearing Khata No. 1010, Khesra No. 3075 were forged, fabricated and void.

6. Learned counsel for the opposite party no. 2 admits that the wife of the younger brother of the informant was one of the defendants in the said suit and the declaration sought for in the Title Suit was also directed against the sale deed allegedly executed in her favour. In the said Title Suit the petitioner no. 1 specifically pleaded her title and possession and challenged the sale deed executed in favour of wife of Nagina Paswan who happens to be Bhabhi of the informant. The learned counsel, however, submits that the order taking cognizance is legal and valid with which no interference is required.

7. The allegations are two fold. At first instance, it



is alleged that the accused-petitioners came all of a sudden when the informant was standing on his land. It is an admitted position that the land in question was the disputed land over which a Title Suit was going on and in the said Suit wife of Nagina Paswan (Bhabhi of the informant) was a party and her sale-deed was under challenge, therefore the claim of the informant that he was standing on his land only shows that he was making out a case, further allegation that the accused petitioners started demolishing the boundary wall which was already there causing a loss of Rs. 24,000/- has not been alleged by the wife of Nagina Paswan or by her husband. It is the wife of Nagina Paswan who allegedly got the sale-deed in her name, and therefore her statement would have been most important but in course of investigation wife of Nagina Paswan or her husband were not examined as is apparent from the materials on record. In fact, in Title Suit also she did not controvert the claim of petitioner no. 1 as to her title and possession over the land in question. thus, first part of the allegation in F.I.R. are apparently not supported by sufficient materials to make out a *prima facie* case of criminal trespass or damage as envisaged under Sections 447 and 427 of the Indian Penal Code.

8. The second part of allegation are that the



petitioners no. 4, 5 and 6 abused the informant, and then, on their order, accused persons together with other unknown persons caught hold of the informant and started pressing his neck while trying to take him away with an intention to kill. Here petitioner nos. 1, 2 and 3 are lady members of the family. Petitioner no. 1 is a widow, as submitted by learned counsel for the petitioners. All the accused persons were allegedly lashed with Lathi and pistol, but there is no allegation of assault by Lathi as also no allegation of firing is there. No injury or sign of assault could be otherwise found on the body of the informant. The informant went to police station only on 24.06.2006 at about 2 P.M. and submitted a written report under his signature showing the date thereon by anti-dating as 23.06.2006. in the facts as alleged it is not even a prima facie case of causing 'hurt' as defined under Section 319 I.P.C., thus Section 323 I.P.C. is not attracted. Similarly there is no prima facie case of wrongful restraint under Section 341 I.P.C.

9. The present case has been evidently lodged as an afterthought implicating the entire family as an outburst of Vaishali P.S. Case No. 312/2006 dated 23.06.2006. The alleged place of occurrence is not the house of the informant or a public place, rather it is the land in respect



of which a Title Suit was going on which has been decided in favour of petitioner no. 1, therefore, the provisions of SC/ST Act, 1989, as it stood prior to amendment w.e.f. 26.01.2016; under which cognizance has been taken, are not attracted. Section 3(i)(iv) & (v) of the SC/ST Act, 1989 are attracted where there is any wrongful occupation or cultivation of land owned by a Member of SC/ST and/or wrongful dispossession of a member of SC/ST from his land. Further Section 3(i)(x) will be attracted where there is intentional insults or intimidation with intention to humiliate in any place within public view. In the present case the place is the disputed land and also the allegation of abuse is not in public view and there is no independent evidence.

10. Although, the opposite party no.2 has appeared but has not disputed the documents/evidences which are on record and relied upon by the petitioners to show that it is a case of *mala fide* prosecution, and therefore, this Court has reasons to believe that those documents are unimpeachable piece of evidence which can be safely relied upon. This Court is satisfied that there is no material to show that the ingredients of Sections 447, 341, 323, 427/34 of the Indian Penal Code read with Section 3(i)(x)(iv) & (v) of the SC/ST Act, 1989 are satisfied and further there are ample uncontroverted materials to show



that it is a mala fide prosecution of the petitioners and continuation thereof would only be an abuse of the process of the Court. The case comes within one of the exception and categories of cases covered under the judgment of the Hon'ble Supreme Court in ***State of Haryana Vs. Bhajan Lal*** reported in ***AIR 1992 SC 604***.

11. In the facts and circumstances stated hereinabove, this Court is of the opinion that the order taking cognizance has been passed in a routine and mechanical manner.

12. The order taking cognizance dated 23.07.2012 in SC/ST P.S. Case No. 129/2006 passed by learned Chief Judicial Magistrate, Hajipur (Vaishali) is held to be bad and the same is hereby set aside.

13. The application stands allowed.

(Rajeev Ranjan Prasad, J.)

Rajeev/N.A.F.R.

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