

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.16159 of 2013

Arising out of P.S Case No.245 Year 2012 Thana SAHARSA COMPLAINT CASE District
SAHARSA

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1. Chandeshwari Bhagat S/o Jageshwar Bhagat R/o Village-Jamal Nagar, P.S.-Salkhua, O.P.-Banma Itahari, Distt.-Saharsa
 2. Babloo Kumar @ Babloo Bhagat S/o Chandeshwari Bhagat R/o Village-Jamal Nagar, P.S.-Salkhua, O.P.-Banma Itahari, Distt.-Saharsa
 3. Rinku Kumar @ Rinku Bhagat S/o Chandeshwari Bhagat R/o Village-Jamal Nagar, P.S.-Salkhua, O.P.-Banma Itahari, Distt.-Saharsa

.... Petitioners

Versus

1. The State of Bihar
2. Baso Sah @ Basudeo Sah @ Bano Sah S/o Narain Sah R/o Village-Jamal Bagar, P.S.-Salkhua, O.P.-Banma Itahari, Distt.-Saharsa

.... Opposite Parties

with

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Criminal Miscellaneous No. 32966 of 2013

Arising Out of PS.Case No. -245 Year- 2012 Thana -SAHARSA COMPLAINT CASE District-
SAHARSA

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Baso Sah Son of Narayan Sah Resident of Village- Jamalnagar, O.P.- Banama Itahri, P.S.- Salakhua, District- Saharsa.

.... Petitioner

Versus

1. The State of Bihar
2. Prem Kumar Sharma Circle Officer, Banama Itahri, P.S.- Salakhua, District Saharsa.

.... Opposite Parties

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Appearance :

(In Cr.Misc. No.16159 of 2013)

For the Petitioners : Mr. Pramod Mishra, Advocate

Mr. Rashmi Jha, Advocate

For the State : Mr. Ajay Kumar No.I, APP

For O.P. No.2 : Mr. Binay Kant Mani Tripathi, Advocate

(In Cr.Misc. No.32966 of 2013)

For the Petitioner : Mr. Binay Kant Mani Tripathi, Advocate

For the State : Md. Mushtaque Alam, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 10-07-2017

Both Cr. Misc. No.16159 of 2013 and Cr. Misc. No.32966

of 2013 are being disposed of by this common judgment as these cases



arise out of the same impugned order dated 07.03.2013, passed by learned Ad hoc Additional Sessions Judge-I, Saharsa in Criminal Revision No.13 of 2013 whereby the learned Ad hoc Additional Sessions Judge-I, Saharsa has partly allowed the revision as order taking cognizance dated 19.12.2012 in Complaint Case No.245(C) of 2012 was set aside with respect to Prem Kumar Sharma, Circle Officer, accused no.1 of the complaint whereas refused to interfere with the order of cognizance with respect to other accused persons. Rest accused persons of the complaint case have preferred Cr. Misc. No.16159 of 2013 whereas complainant has preferred Cr. Misc. No.32966 of 2013 challenging the order dated 07.03.2013.

2. Learned counsel appearing on behalf of the petitioners of Cr. Misc. No.16159 of 2013 submits that Chandeshwari Yadav, who is also known as Chandeshwari Bhagat, petitioner no.1, Ward Commissioner, at the relevant point of time filed a petition in the office of Circle Officer for initiating a proceeding under Bihar Public Land Encroachment Act, 1956 as Narain Sah, father of the complainant, encroached a part of the road situated in Khesra No.1520 of Khata No.637 by constructing a temporary room of 14' x 12' with asbestos roof top causing inconvenience to passers-by. By the said act, the width of the road becomes lesser so under Section 3 of the Public Land Encroachment Act, 1956, Encroachment Case No.1/2009-10 was initiated in which Chandeshwari Bhagat, petitioner no.1, was applicant



whereas Narain Sah, father of the complainant was opposite party. In the said proceeding show cause was issued to the opposite party. However, impugned order passed in Criminal Revision No.13 of 2013 shows that the complainant appeared but thereafter left *pairvi*. A proceeding was initiated and a Magistrate was deputed for removal of encroachment from the public land and finally the encroachment was removed, so being aggrieved by the said act, the complainant filed the present case against the Circle Officer who had passed the order and these petitioners who filed and got initiated proceeding of the encroachment under the Public Land Encroachment Act, 1956.

3. The allegation is levelled that while encroachment was being removed, they committed theft of food grains and assaulted the complainant with fist and slap. There was no occasion for these petitioners to be engaged in such activities as removal of encroachment was done by a Magistrate deputed by the Circle Officer so the case of the complainant becomes unbelievable, more so malicious in nature; so continuation of the criminal proceeding in this case would be sheer abuse of the process of the court.

4. Learned counsel appearing on behalf of opposite party no.2, namely, Baso Sah in Cr. Misc. No.16159 of 2013 as well as the petitioner in another Cr. Misc. No.32966 of 2013 submits that there is specific allegation against Chandeshwari Bhagat and others that they assaulted the complainant with fist and slap and also committed theft



of food grains kept in the said room. The land was in the name of the complainant not in the name of his father and shows a rent receipt in his name. The allegation is specific against them so order of cognizance against them is just and proper whereas setting aside the order of cognizance against Prem Kumar Sharma by learned Ad hoc Additional Sessions Judge-I, Saharsa is concerned, the petition filed by him for setting aside the order of cognizance was allowed considering that no sanction under Section 197(1) Cr.P.C. was obtained for launching prosecution against him. There is settled principle of law that in case of public servants if no nexus in discharge of the official duty and the actual act committing offence is found in such case then there is no requirement of taking sanction for prosecution so order dated 07.03.2013, passed by learned Ad hoc Additional Sessions Judge-I, Saharsa requires to be set aside as far as Prem Kumar Sharma is concerned. However, the learned court below rightly has not interfered with the order of cognizance taken against the present petitioners of Cr. Misc. No.16159 of 2013.

5. A brief fact giving rise to the case is that opposite party no.2 Baso Sah filed a complaint against Prem Kumar Sharma, the then Circle Officer and rest three accused persons, petitioners of Cr. Misc. No.16159 of 2013, alleging that accused nos.2 to 4 are related to accused no.1 and all accused persons along with five unknown persons came along with police force to the house of the complainant and were



intended to demolish his house, complainant protested then all abused him in filthy language and accused no.1 caught hold of him and rest others assaulted him with fists and slaps, not only that they demolished his house and committed theft by taking away food grains. It is also alleged that the complainant has got the possession over the land and rent receipt is also being issued by the revenue authorities so accused no.1 coming under the influence of accused nos.2 and 4 demolished his house. Complainant went to the police station for lodging the case but they refused to register it, so filed a complaint case.

6. On perusal of the record, it is explicit that Encroachment Case No.1/2009-10 was initiated for removal of encroachment from the government road as the complainant's father had constructed there a temporary structure measuring 14' x 12'. The proceeding under Section 3 of the Public Land Encroachment Act, 1956 was initiated on the basis of a petition filed by Chandeshwari Yadav, one of the petitioners. Show-cause was issued to the opposite party but despite adjournments did not choose to appear, therefore, ex-parte order was passed for removal of the encroachment serving a notice that if encroachment is not removed within 24 hours, the same shall be removed forcibly by the police and the S.D.O. Simri Bakhtiarapur was also informed about the decision. The encroachment was not voluntarily removed even after passing of the order then the Magistrate was deputed with police force and ultimately the



encroachment was removed. The allegation levelled in the complaint filed against the accused persons is of demolishing the house of the complainant whereas the fact remains otherwise as in the proceeding under Section 3 of the Public Land Encroachment Act, 1956 in Encroachment Case No.1/2009-10, the encroachment was removed by police force in presence of the Magistrate.

7. It is explicit from the records of the case that temporary room measuring 14'x12' was demolished in accordance with law in view of the order passed in Encroachment Case No.1/2009-10 in presence of the Magistrate and police force, so there is no occasion for these petitioners to demolish the house of the complainant. The allegation levelled in the complaint petition appears absurd and improbable. Moreover no theft is reported by any public authority as at the time of demolition police force was also deployed there. The accused no.1, Prem Kumar Sharma, the then Circle Officer of the concerned block who passed the order of removal of encroachment has also been implicated in this case to wreck vengeance against him and the learned Ad hoc Additional Sessions Judge-I, Saharsa has rightly observed that there is nexus in between his duty and the alleged allegation of demolishing house of the complainant against which encroachment proceeding was initiated earlier; so for the aforesaid reasons the criminal proceeding including order taking cognizance dated 19.12.2012, passed in Complaint Case No.245(C) of 2012



against Chandeshwari Bhagat and others is set aside as well as order dated 07.03.2013, passed by the learned Ad hoc Additional Sessions Judge-I, Saharsa in Criminal Revision No.13 of 2013 is set aside with respect to the order of not interfering with the cognizance order against these petitioners whereas the said order is affirmed with regard to Prem Kumar Sharma.

8. In the result, Cr. Misc. No.16159 of 2013 stands allowed whereas Cr. Misc. No.32966 of 2013 stands dismissed.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.07.2017
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