

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.19685 of 2014

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Rajkumar Pandey Son of Jatashankar Pandey Resident of Village - Mathauli, P.S.-
Bairia, District - West Champaran

.... Petitioner

Versus

1. The State of Bihar
2. Sahitya Bhushan Pandey Son of Jatashankar Pandey
3. Rajiv Rajan Pandey Son of Sahitya Bhushan Pandey All Resident of Village -
Mathauli, P.S.- Bairia, District - West Champaran

.... Opposite Parties

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Appearance :

For the Petitioner	: Mr. Harendra Kumar Tiwary, Advocate
For the Opposite Party No.2	: Mr. Dharmendra Chaubey, Advocate
For the State	: Mr. U.S.P.Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 04-09-2017

This application under Section 482 of the Cr.P.C. has been filed to quash the order dated 12.06.2013 passed by Chief Judicial Magistrate, Bettiah in Case No.32 of 2013 whereunder the learned Magistrate took cognizance of offence under Section 188 of the IPC ordered for issuance of summons against the petitioner.

2. Heard and perused the record.

3. The petitioner is full brother and uncle of Opposite Party Nos.2 and 3 respectively. At the instance of Opposite Party No.2 in a proceeding under Section 144 of the Cr.P.C., a report was called for from the police and on the basis of said report the learned SDO lodged FIR against the petitioner and his father for the offence under Section



188 Cr.P.C. on the allegation that the petitioner violated the prohibitory order passed under Section 144 Cr.P.C. The learned counsel for the petitioner submits that the petitioner and Opposite Party No.2 in order to partition the landed property including their aforesaid ancestral house, filed Partition Suit No.148 of 1995 which is still pending. In the said partition suit, the Opposite Party No.2 filed an injunction petition praying therein to restrain the petitioner and his father from making construction which after hearing was rejected. The Opposite Party No.2 suppressing the said fact got a proceeding under Section 144 Cr.P.C. initiated. There was also absolutely no emergency warranting initiation of proceeding under Section 144 Cr.P.C. over the residential house which was in occupation of the petitioner and his father. The Opposite Party No.2 has already constructed his residential house on a different plot and in order to harass the petitioner and his aged father has got the proceeding initiated under Section 188 Cr.P.C. The learned Magistrate without applying judicial mind has taken cognizance and so the same is fit to be quashed.

4. The learned APP as well as Opposite Party Nos.2 and 3 opposed the submissions.

5. On perusal of impugned order and supplementary affidavit filed on behalf of the petitioner, I find that the petitioner and Opposite Party No.2 are full brothers. The Opposite Party No.2 filed a



petition before SHO of Baria P.S. West Champaran stating therein that his father and younger brother (this petitioner) were making construction in spite of pendency of Partition Suit No.148 of 1995. A prayer was made to prohibit the petitioner and his father from making construction. From the supplementary affidavit and the annexures filed on behalf of the petitioner, I find that the Opposite Party No.2 had filed a petition before Sub Judge Court for injunction which was refused. The dispute between the parties is the ancestral house which is in occupation of the petitioner and his father. The Opposite Party No.2 is presently residing in a different house which was constructed by Opposite Party No.2. This fact asserted in supplementary affidavit filed on behalf of the petitioner, has not been denied by the Opposite Party No.2, the initiation of proceeding under Section 144 Cr.P.C. with respect to residential house which is being jointly claimed by both the parties is bad in law. The police in course of enquiry have simply stated that there is apprehension of breach of peace which does not find support from any material on record. The Opposite Party No.2 in his petition has stated that on 17.09.2012 his brother and father unlocked the room and put their lock. They removed his household articles and caused loss to the tune of Rs.45,000/-. The allegation of violation of prohibitory order appears vague. The petitioner and his father were residing in their ancestral house jointly and so the order of



prohibiting them in a proceeding under Section 144 Cr.P.C. was bad and beyond the scope of Section 144 Cr.P.C. In this view of the matter, the court below has erred in taking cognizance under Section 188 IPC against the petitioner.

. **6.** In view of above facts, the institution of FIR for the offence under Section 188 Cr.P.C. and cognizance order against the petitioner appears to be abuse of process of the Court. The impugned order taking cognizance and prosecution of the petitioner and other co-accused is therefore quashed and this criminal miscellaneous application is allowed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	13.09.2017
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