

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.37142 of 2014**

Arising Out of PS.Case No. -974 Year- 2013 Thana -EAST CHAMPARAN COMPLAINT District-  
EASTCHAMPARAN(MOTIHARI)

- =====
1. Wasil Ahmad Khan Son of Anjarul Haque Khan
  2. Navin Ahmad Khan Son of Anjarul Haque Khan, Both Resident of Village + P.O.+P.S. - Kesariya, District - East Champaran
  3. Zikrullah Khan Son of Late Tahsadu Khan, Residents of Village - Kundwa, P.S. - Kesaria, District - East Champaran

.... .... Petitioner/s

Versus

1. The State of Bihar
2. Anita Devi Wife of Chandrika Prasad, D/o Late Ganesh Prasad, Resident of Village - Chainpur, P.S. - Kesariya, District - East Champaran

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Madhurendra Kumar, Adv.

For the Opposite Party/s : None.

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**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**

**ORAL JUDGMENT**

**Date: 09-08-2017**

The present case arises out of a complaint lodged by the Opposite Party No.2, namely, Anita Devi, against the petitioners and one another before the learned court of Chief Judicial Magistrate, East Champaran, Motihari. The said complaint was filed on 26.04.2013 and was numbered as Complaint Case No. 974 of 2013.

2. The opposite Party No.2 i.e. the complainant of the aforesaid complaint case has stated in the complaint petition that her father was working in Indian Military Department, whose name was Ganesh Prasad, and during his life time the land, where the occurrence has taken place, was mutated in the year 1964 vide Case No. 1 of 1964 and since then the father of Opposite Party No.2 as well as



Opposite Party No.2, after her marriage, have been in peaceful possession of the said land and every year agricultural activity takes place over the said land. It has been further stated in the complaint petition that on the date of occurrence, the paddy and *moong* (vigna) crop, grown by the O.P. No.2 were being uprooted by the accused persons and 24 other persons. On coming to know about the said occurrence, the Opposite Party No.2 reached at the place of occurrence and asked the accused persons not to uproot the crop, however, they did not stop and instead started abusing and beating the Opposite Party No.2. Thereafter, the people from her neighbourhood came there and tried to pacify the matter, whereupon the Opposite Party No.2 could save her life. However, the accused persons threatened her and told her to write the land in their names, otherwise they would harass her.

3. The witnesses produced on behalf of the O.P. No.2 appear to have been examined by the learned Judicial Magistrate and upon perusal of the statement of the said witnesses as also the statement of the complainant on solemn affirmation and perusal of the material on record, the learned Judicial Magistrate, East Champaran, Motihari found a *prima facie* case against all the accused persons for the offence punishable under Sections 354, 323, 504, 427 and 379 of the Indian Penal Code and has summoned the accused persons by an



order dated 17.12.2013.

4. The aforesaid order dated 17.12.2013 passed by the learned Judicial Magistrate, Ist Class, East Champaran, Motihari, is under challenge in the present petition.

5. It has been submitted by the learned counsel for the petitioners that the Circle Officer, Kesharia has submitted his enquiry report dated 24.09.2013 to the Chief Judicial Magistrate, Sadar, Motihari, stating therein that an enquiry was made by the Circle Inspector and he has found upon investigation that Mauza Kesharia, P.S. No. 204, Khata No. 19, Khesra No. 922, Rakva 2.03 acre and Khesra No.605 Rakva 2.60 acre, totalling Rakva 4.63 acre is a *Gairmajarua* land, there is no *Jamabandi* in the name of any person or institution as per Register-II. It has been further stated in the said report that the said land is not in possession of any person, the said land is vacant land and on the western side of the said land i.e. Mauza Godhi, Khata No. 111 Khesra No. 1441, Rakwa 5.20 acre, there is a land, which is also a *Gairmajarua* land, however, in the Sairat Register, the same has been mentioned as a land which is used for *Tajia* fair, held every year. The land at Khata No. 112, Khesra No. 1440, Rakwa 1 acre is registered as “karbala” (sale deed) in the *khatian*.

6. It has been further submitted by the learned counsel for



the petitioners that the Sub-Divisional Officer, Chakia, by his letter No. 253 dated 25.04.2013 has also submitted an enquiry report before the District Magistrate, East Champaran, Motihari, stating therein that the Opposite Party No.2, in the night of 14.04.2013 had quietly and stealthily ploughed the said land situated at Khesra No. 922 and 605 whereupon the people of the local Muslim community had objected and filed objection petition before the Circle Officer, Kesharia stating therein that the said land is 'karbala', a burial ground, Imambara, Tajiagah and the Opposite Party No.2 herein has stealthily ploughed the said land, hence, enquiry be made. The said Opposite Party No.2 is said to have again ploughed the land on 19.04.2013. It has been further stated in the said report that the said land is *Gairmajarua* land and a government land, hence, proceedings under Section 145 Cr. P. C. were initiated on 18.04.2013.

7. The petitioners have also annexed a copy of the order dated 10.05.2013 passed by the Sub-Divisional Officer, Chakia, East Champaran, wherein he has come to the conclusion that the Opposite Party No.2 herein or for that matter her father, have got no possession over the disputed land in question and had illegally tried to plough the land and occupy the same, hence, prevention order was made absolute against the Opposite Party No.2.

8. The learned counsel for the petitioners has submitted



that even if the complaint petition is taken on its face value, it is apparent that the entire dispute is civil in nature and no allegation of any specific overt act or theft has been levelled against the petitioners, so as to make out a case under sections 354, 323, 504, 427 and 379 of the Indian Penal Code, especially in view of the fact that the disputed land/ land in question is neither the land of the Opposite Party No.2 nor she is in possession over the same.

**9.** I have perused the materials on record and given a thoughtful consideration to the submissions made by the learned counsel for the petitioners.

**10.** It is apparent from a bare reading of the complaint petition that the allegations raised therein pertain to a land dispute, which is purely of civil nature and, in fact, there is no allegation of any specific overt act against the petitioners herein as well as there is no allegation of theft, more so in view of the fact that the Circle Officer and the Sub-Divisional Officer have found the disputed land to be a *Gairmajarua* land, which is not in possession to the Opposite Party No.2. On the contrary, it has been found that the Opposite Party No.2 has been trying to grab and occupy the said land, hence, Section 145 Cr. P.C. proceedings were initiated against the Opposite Party No.2 and prevention order was made absolute against her by the Sub-Divisional Officer, Chakia, East Champaran by an order dated



10.05.2013. Thus, it is apparent that the allegations levelled in the complaint petition are purely in the nature of a civil dispute and the Opposite Party No.2 could have taken recourse to the civil proceedings, however, she has chosen to file the instant complaint with oblique motive and the entire criminal prosecution launched at her behest is mala fide in nature. In this connection, reference be had to a judgments of the Hon'ble Apex Court reported in *1992 Supp (1) SCC 335 [State of Haryana v. Bhajan Lal]*, *(2006) 6 SCC 736 [Indian Oil Corporation v. NEPC India Ltd.]* and *(2011)3 SCC (Crl.) 23 [Joseph Salvaraja v. State of Gujarat and others]*. It is a trite law that where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, such cases are fit cases for exercising power under Section 482 Cr. P. C. by this Court.

**II.** I further find that the Opposite Party No.2, despite valid service of notice on her, is avoiding to appear before this Court, may be for the reason that it has been found by the government authority, on enquiry, that disputed land is a *Gairmajarua* government land and the Opposite Party No.2 is not in possession thereof. It is a settled law that no one can get protection of law for redressal of the



grievances of his/her illegal act.

**12.** For the reasons stated herein above, I find that the prosecution launched at the best of the Opposite Party No.2 is mala fide, the allegations levelled in the complaint petition are purely in the nature of a civil dispute, which has been given a colour of criminal case and the allegation made in the complaint petition do not constitute any prima facie offence and no criminal offence is made out against the petitioners as well as the said dispute, at best, can be said to be a land dispute, hence, continuance of the aforesaid criminal proceeding and the prosecution of the petitioners would amount to an abuse of the process of the court, hence, it has to be quashed.

**13.** Accordingly, the application is allowed and the order dated 17.12.2013 passed by Shri Ashok Kumar II, learned Judicial Magistrate, Ist Class, East Champaran, Motihari, giving rise to Trial No. 4101 of 2013 is hereby set aside and the entire criminal proceedings emanating therefrom is also quashed.

**14.** There shall be no order as to costs.

**(Mohit Kumar Shah, J)**

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