

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.42744 of 2014

Arising Out of PS.Case No. -439 Year- 2013 Thana -NAWADAH COMPLAINT CASE District-
NAWADA

- =====
1. Md. Mukhtar Quaraishi Son of late Haji Abdul Sakur, Resident of Mohalla - Bhadauni, P.S.- Nawada in the District of Nawada
 2. Suresh Kumar Sinha Son of Late Sacchidanand Sinha
 3. Sunil Kumar Sinha Son of Late Shambhu Sharan Sinha, All Resident of Village - Sinha bhawan, Hospital Road, Nawada, P.S.- Nawada in the District of Nawada

.... Petitioner/s

Versus

1. The State of Bihar
2. Narayan Chouhan Son of Dahu Chauhan Resident of Bhadauni Beldariya, P.S.- Nawada, in the District of Nawada

.... Opposite Party/s

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Appearance :

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

For the Opposite Party No.1 : Mr. Bhanu Pratap Singh, APP

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 08-11-2017

Heard Shri Deepak Kumar, the learned counsel for
the petitioners.

2. This Court had issued notice to the Opposite Party No.2 by an order dated 11.09.2017. From the record it is apparent that the notice has been validly served upon the Opposite Party No.2, but he has chosen not to appear before this Court, hence this Court is left with no option, but to proceed with the matter.

3. The short facts of the case is that the Opposite Party No.2 had filed a Complaint Case bearing No. 1070 of 2012 against the petitioners herein before the court of learned Chief Judicial



Magistrate, Nawada, inter alia, alleging therein that he has some land in village Bhadauni Beldaria and out of them, but certain lands bearing plot No. 428, 687, 688 and 690, as mentioned in the complaint petition are the ancestral lands of the Opposite Party No.2, which has been in possession of the ancestors of the Opposite Party No.2 and receipt has also been received by the Circle Office. It has been further stated that the ancestral land is in the name of his father namely, Dahu Beldar and others. The allegation levelled against the accused persons is that they have prepared forged sale deed in the name of Smt. Premlata Devi and a registered power of attorney was issued in the name of petitioner no.2 on the basis of the said forged sale deed in the year 2012. In paragraph-4 of the said power of Attorney it has been stated that land will be sold by the petitioner and given to petitioner no.2 (since deceased). Thus, in sum and substance the allegation is to the effect that the accused persons are trying to sell the land which belongs to the Opposite Party No.2 and the Opposite Party No. 2 and his ancestors are in possession of the same.

4. The said complaint case was referred to the police under Section 156(3) of the Cr. P.C. and Nawada P.S. Case No. 438 of 2012 dated 1.9.2012 was registered against the petitioners under Sections 327, 336, 373, 420 and 436 of the Indian Penal Code. The police had then submitted final form dated 31.1.2013 in the said FIR



stating therein that upon investigation of the entire case it has transpired that a case appertaining to the said land is going on before the L.R.D.C. and the said dispute is civil in nature. Thereafter, the opposite party no.2 had filed a protest cum complaint petition on 14.2.2013 bearing Protest/ complaint Case No. 439 of 2013 on the same and similar allegations.

5. The learned trial court by an order dated 7.5.2014 held that a case under section 423 of the Indian Penal Code is prima facie made out. The aforesaid order dated 7.5.2014 is under challenge before this Court.

6. The learned counsel for the petitioners has submitted that no offence under Section 423 of the Indian Penal Code is made out against the petitioners herein and, if at all, any case is made out the same is made out against the petitioner no.2, who has already died. It is submitted that the allegation levelled in the protest or Complaint petition are civil dispute and do not constitute any criminal wrong. It is further submitted that at best the opposite party no.2 could have agitated the dispute before the appropriate court of civil jurisdiction and, in fact, the matter is already pending adjudication before both the learned courts of L.R.D.C. and learned Sub-Judge 1st Nawada with regard to the same land in question in the present proceedings.

7. Having heard the learned counsel for the petitioners I



find that the entire allegations levelled in the complaint petition or the protest petition constitutes a civil dispute.

8. It is a trite law that any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution, should be deprecated and nipped in the bud. The Hon'ble Apex Court has held that it would be just and legal for the High Court to exercise the power under Section 482 of the Code of Criminal Procedure, if the FIR or complaint, if taken at their face value and accepted in its entirety, do not constitute any offence or makes out a case against the accused and if such allegations do not disclose a cognizable offence. In this regard, reference be had to a case reported in (2006) SCC 736 (**Indian Oil Corporation v. NEPC India Ltd.**).

9. The Hon'ble Apex Court in the case of **Joseph Salvaraja v. State of Gujarat and others**, reported in (2011) 3 SCC (Crl.)23, held as under:-

“In our opinion, the matter appears to be purely civil in nature. There appears to be no cheating or a dishonest inducement for the delivery of property or breach of trust by the appellant. The present FIR is an abuse of process of law. The purely civil dispute, is sought to be given a colour of a criminal offence to wreak vengeance against the



appellant. It does not meet the strict standard of proof required to sustain a criminal accusation. In such type of cases, it is necessary to draw a distinction between civil wrong and criminal wrong as has been succinctly held by this Court in *Devendra v. State of U.P.*, (2009) 7 SCC 495, in which, it was held (para-27) that a distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out.”

10. The Hon’ble Apex Court in a leading case in the subject matter i.e. reported in *1992 Supp(1) SCC 335 (State of Haryana v. Bhajan Lal)* also in paragraph-102 stated that:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of



any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

xx xx xx

- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

xx xx xx

- (7) 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.”

II. For the reasons stated herein above, it is clear that the allegations levelled in the Complaint/ protest petition constitute only



a civil wrong and not a criminal wrong, hence the petitioners herein cannot be permitted to be harassed, although no case for taking cognizance of the offence, as alleged, has been made out.

12. Accordingly, the order dated 7.5.2014 passed in Complaint/ Protest Case No. 439 of 2013 and the criminal proceedings emanating therefrom are hereby set aside. The petition is allowed. However, there shall be no order as to costs.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	N/A
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