

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.21392 of 2014

Arising Out of PS.Case No. -159 Year- 2012 Thana -BAIRIYA District-
WESTCHAMPARAN(BETTIAH)

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Saifullah @ Pappu Mian Son of Late Bhola Mian resident of Mohalla
Queela, P.S- Town Thana, District- West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar null null
2. Abid Hussain Son of Late Samshul Haque Resident of Village- Bhithna,
P.S- Bairiya, District- West Champaran.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mohammed Abu Haidar, Advocate
For the Opposite Party/s : Mr. U.S.P. Singh (APP)

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL ORDER

7 15-11-2017

This petition under Section 482 of Code of Criminal Procedure has been filed by the petitioner for quashing the order taking cognizance dated 18.09.2013 by which cognizance under Sections 341, 323, 379, 188 and 504/34 of the Indian Penal Code has been taken against the petitioner in Bairia P. S. Case No. 159 of 2012.

2. Briefly stated, the facts of the case is that a written report was made by informant before the Officer-in-Charge of Bairia P.S. at West Champaran which was registered as Bairia P.S. Case No. 159 of 2012 dated 12.07.2012 under Sections 341, 323, 504 and 379/34 of the Indian Penal Code.

3. It has been stated in the F.I.R. that in 1981 deceased Bhola Mian executed a deed of re-conveyance with respect to Khata No. 11, Plot No. 138 measuring an Area 17



katha and 12 dhurs after accepting Rs. 15,000/- and mortgaged the land to the petitioner. The complainant want to re-purchase the land with Rs. 15,000/- but the accused petitioner assaulted him. The case was investigated by the police and a charge sheet was submitted by the police after investigation against the petitioner under Sections 188, 323, 504 and 379 of the Indian Penal Code vide charge sheet dated 02.09.2013.

4. It has been contended by the counsel for the petitioner that opposite party No. 2 complainant has also filed a Title Suit No. 260 of 1990 in the Court of Munsif, Bettiah at West Champaran for specific performance of contract which was dismissed on 29.05.1999 against which the informant opposite party No. 2 filed Title Appeal No. 28 of 1999 and 31 of 1999 and after decision of the 1st appellate Court the informant has filed second appeal No. 337 of 2001 in Patna High Court.

5. It has been further submitted by the counsel for the petitioner that initially the F.I.R. was lodged against a dead person and one another and thereafter the name of the petitioner has been added during the investigation and was made accused in this case. In the F.I.R. instituted on the written report of complainant opposite party No. 2 there are two named accused, Bhola Mian father of petitioner who died much earlier and Shahnawaz Akhtar and no any other unidentified accused or identified accused has



been named in the F.I.R., as such, order taking cognizance against the petitioner is without any basis and false implication is very much apparent.

6. Considering the facts of the present case and in view of admitted facts that for the same disputed land Civil Suit was filed by the complainant and same was dismissed and thereafter First Appeal decided by the 1st Appellate Court, second appeal has been filed by the informant opposite party No. 2 which is pending in the High Court. From the contents of F.I.R. it is also apparent that possession of disputed land is of petitioner for which civil case is pending between the parties.

7. Considering the nature of allegation and also in view of the fact that F.I.R. was lodged against dead person and no any other person except the person named in the F.I.R. against whom allegation is of committing the offence and petitioner is not named in the F.I.R., the present Criminal Proceeding would amount to an abuse of process of Court, as such, the order taking cognizance dated 18.09.2013 as Bairia P.S. Case No. 159 of 2012 as well as whole criminal proceeding arising out of said case is quashed.

8. The petition stands allowed.

(S. Kumar, J)

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