

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.21663 of 2013

Arising Out of PS.Case No. -158 Year- 2006 Thana -BUXAR COMPLAINT CASE District-
BUXAR

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1. Udai Narain Rai S/O Ram Murat Rai Resident Of Village Civil Lines, Buxar, P.S. Buxar (Town), District Buxar.
 2. Kamta Choubey S/O Late Ram Govind Choubey Resident Of Village Sikroul, P.S. Sikroul, District Buxar.
 3. Arbind Kumar Singh S/O Shiv Govind Singh Resident Of Village Civil Lines, Buxar, P.S. Buxar (Town), District Buxar.
 4. Shashi Nath Tiwary S/O Ram Janam Tiwary Resident Of Village Charitravan, Buxar, P.S. Buxar (Tiwn), District Buxar.
 5. Dabbu Choubey S/O Kamta Choubey Resident Of Village Sikroul, P.S. Sikroul, District Buxar.
 6. Narayan Dutt Mishra S/O Late Sri Niwas Mishra Resident Of Village Ram Chautra, Charitravan, P.S. Buxar (Town), District Buxar.
 7. Siya Ram Singh S/O Late Kapur Singh Resident Of Village Shivpuri, Budhanpurwa, P.S. Buxar (Town), District Buxar.

.... Petitioners

Versus

1. The State Of Bihar.
2. Bharat Narayan Mishra S/O Late Maharshi Khaki Baba Resident Of Village Vishwamitra Aashram, P.S. Buxar (Town), District Buxar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Digvijay Kumar Ojha
For the Opposite Party/s : Mr. Humayu Ahmad Khan, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 12-07-2017

This is an application under Section 482 of Cr.P.C. praying therein to quash the order dated 26.09.2012 passed by the Additional District & Sessions Judge IV, Buxar in Criminal Revision No. 203 of 2008. The said criminal revision was filed to set aside the order dated 18.07.2008 passed in Complaint Case No. 158(C) of 2006 whereunder the complaint case of O.P. No. 2 was



dismissed under Section 203 of Cr.P.C. The learned Additional District & Sessions Sessions Judge as per impugned order directed the court below to pass order afresh after reevaluating the material.

2. The facts in brief is that the O.P. No. 2 filed a complaint case on the file of C.J.M., Buxar as alleging inter alia that on 19.02.2006 at 9 AM, these petitioners along with 300 unknown forcibly entered into the compound of Khakibaba Hata and looted entire articles kept in the house within the premises occupied by the complainant.

3. After hearing learned counsel for the petitioners as well as APP for the State and on perusal of annexures enclosed with the application, I find that the place of occurrence is known as Khakibaba Hata compound where M.V. College, Buxar is running since last 50 years. The land was donated by Maharaja Dumraon Damal Singh to the governing body of college by virtue of registered deed of gift dated 01.02.1958. The said land was subsequently recorded in the name of college. In the campus of college there are temples of Sri Ram Janki Mandir and 'Kaldhatiriji' (Gaiya Maiya). The father of O.P. No. 2 was appointed to perform Ragbhog of the temples, but on account of laches in performing duty the father of O.P. No. 2 was removed from the post of Pujari and management of temples was handed over to the Vice



Chancellors of Veer Kuwar Singh University. The son of the O.P. No. 2 filed a complaint case No. 523C of 2004 against some of the employees of the college alleging therein that on 22.08.2004 the accused persons broke open the gate of his house and looted the properties and also attempted to commit his murder by firing. The order taking cognizance was challenged by the accused persons by filing Criminal Miscellaneous No. 39033 of 2006 and Criminal Miscellaneous No. 29078 of 2008. Both the criminal miscellaneous were allowed and the order taking cognizance with respect to two sets of petitioners was quashed observing that the criminal prosecution of the petitioners was an abuse of process of the court. It further appears that the O.P. No. 2 filed a complaint case No. 1095(C) of 2006 against some of the staffs of college on the allegation that his salary was withheld. The said order was challenged by the college staffs by filing Criminal Miscellaneous No. 31594 of 2008 which after hearing was allowed on 19.05.2015 and proceeding of complaint case no. 1095 C of 2006 and order passed on 05.03.2008 in the said complaint case were set aside. The son of O.P. No. 2 filed complaint case no. 171C of 2002 against the officials of Veer Kuwar Singh University alleging that the officials had defalcated the salary and grant of his father (O.P. No. 2 of this criminal miscellaneous). In that case, cognizance under Sections



202, 408 and 419/34 I.P.C. was taken. The said order was challenged and proceeding against the university officials was quashed and set aside on 22.09.2010 as per order passed in Criminal Miscellaneous No. 6496 of 2008. The place of occurrence is being claimed by the O.P. No. 2 by virtue of oral gift but there is nothing on record to support his claim of oral gift. It further appears that in course of enquiry, the O.P. No. 2 has stated that the S.D.M. had dispossessed him from the place of occurrence, which is campus of M.V. College. The petitioner No. 1 is S.D.M. and Government Officials who in discharge of their duty with the police help got the encroachment removed some of the portion from college campus which was unauthorizedly occupied by the O.P. No. 2. The petitioners who are Government servant cannot be prosecuted unless sanction to prosecute them is obtained under Section 197 of the Cr.P.C. The O. P. No. 2 and his son on similar fact had lodged complaint case on earlier occasion also which were quashed by the High Court as stated above and so, the criminal prosecution of the petitioners is nothing but an abuse of process of court.

4. In view of above facts, the order dated 26.09.2012 passed by learned Additional Sessions Judge IV, Buxar passed in Criminal Revision No. 203 of 2008 as well as prosecution of these petitioners are quashed. The Criminal Miscellaneous Application is



accordingly allowed.

(Sanjay Kumar, J)

ajaypd./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.07.2017
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