

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.33968 of 2013

Arising Out of PS.Case No. -239 Year- 2012 Thana -PATNA COMPLAINT CASE District-
PATNA

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1. Bhagirath Sharma @ Bhagirath Prasad Sharma S/O Late Ambika Prasad Singh Resident Of Village- Dhibar, P.O- Chakanbada, P.S- Pandarak, District- Patna.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Ranjeet Kumar S/O Sri Madhav Sharma Resident Of Village- Dhiwar, P.O- Chakanbada, P.S- Pandarak, District- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Subodh Kumar Jha
For the Opposite Party/s : Mr. S.Eheteshamuddin(App)

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
CAV ORDER
-01-2017

Heard the parties.

By way of the present application preferred under Section 482 of the Code of Criminal Procedure, the petitioner seeks quashing of the order taking cognizance dated 21.10.2011 passed by Shri Ram Jha, learned Judicial Magistrate -1st Class, Barh, in Complaint Case No. 239(C)/2012, for the offences punishable under Sections 147, 323, 427 and 504 of the Indian Penal Code.

Case of the prosecution in short is that one Ranjeet Kumar (complainant) a resident of Mouza Dhibar, Khata No. 171, Khesara No. 578 measuring an area of 29 decimals, filed a



complaint petition before the ACJM, Barh alleging therein that the petitioner wanted to grab a piece of land measuring an area of 3 decimal belonged to the complainant for which proceeding under Section 107 of the Cr.P.C. was initiated against the petitioner. It is also their case that later on a proceeding under Section 144 of the Cr.P.C was also initiated which cumulated with the final decision of the learned Additional Sessions Judge –III, Barh, who set aside the proceeding under Section 144 Cr.P.C. in Criminal Revision No. 391 of 2011. Further case of the complainant is that he filed a petition before the Deputy Collector Land Reforms, who after hearing the parties, disposed of the application with the direction to the complainant to move before the Civil Court. Thereafter the complainant and his family members have filed a Title Suit bearing Title Suit No. 151/11, pending in the Court of Sub Judge –II, Barh. Further case of the complainant is that in the aforesaid case though the accused persons have appeared but they have not filed any written statement and also in retaliation the accused persons started to destroy the cow shed and remove the cow dung cakes from the wall of the cow shed and when the complainant protested, the accused persons including petitioner started abusing him and assaulted him by means of fists and slaps and petitioner threatened



him to compromise the case, otherwise he will implicate the complainant in the false case and also beaten the labourers of the complainant. Further allegation is that in the said scuffle petitioner took away Rs. 600/- from the pocket of the complainant and accused no. 2 snatched his titan watch worth Rs. 1200. Thereafter the complainant and other witness was examined on solemn affirmation and after completion of enquiry the learned Magistrate issued process against the accused persons under Section 204 Cr.P.C. for the offences punishable under Sections 147, 148, 323, 379, 427 and 541 of the Indian Penal Code, which is under challenge before this Court in the present application.

Learned counsel for the petitioner submitted that out and out false and frivolous allegation has been levelled against the petitioner. Petitioner happens to be a respectable retired police officer aged about 75 years and has never been involved in any of the said act as alleged by the complainant and in the backdrop of existing land dispute between the parties, the complainant has lodged the present complaint case only to malice the image of the petitioner and the allegation that the petitioner snatched away Rs. 600 from the pocket of the complainant is completely baseless and the same has not been found true in enquiry. It has further been submitted that there is a bonafide land dispute and large number of



cases were going on between the parties and still a Title Suit is pending. Furthermore it has been submitted that admittedly this is out and out a case of civil nature and only with the ill motive to harass the petitioner and others, the present complaint case has been instituted and if it is allowed to be continued, the same will be an abuse of process of law and malafide proceeding, which has been filed only to wreck vengeance against the petitioner and to settle the grudge.

On the other hand learned counsel for the Opposite Party No. 2 submitted that a Title Suit bearing Title Suit No. 151/11, pending in the Court of Sub Judge –II, Barh has been filed by the complainant and on retaliation of the said, the petitioners and others come to the house of the opposite party no. 2 and assaulted him and destroyed his cattle shed in order to create evidence in their favour. It has further been submitted that the witnesses during the course of investigation have also supported the case of prosecution and as such there is no illegality in order of cognizance dated 21.10.2011 and the petition filed by the petitioner has no merit and fit to be dismissed.

Having heard both sides. From perusal of the records though it appears that large number of cases were going on between the parties right from the year 2011 in the backdrop of



existing land dispute over a piece of land and at present a Title Suit is pending before the Sub Judge –II, Barh. It also appears from the record that earlier the petitioner has filed a case against the opposite party no. 2 bearing Pandarak P.S. Case No. 4/12 under Sections 447 and 379/34 of the Indian Penal Code, in which charge-sheet has also been submitted against the opposite party no. 2. However, from perusal of complaint petition it appears that there are *prima facie* allegations against the petitioner, which has consistently been supported by the complainant on solemn affirmation as well as in the statements of witnesses during enquiry.

Considering the facts and circumstances narrated above, though it appears that there exists land dispute between the parties. and a criminal case has also been filed by the petitioner against the opposite party no. 2 but on the basis of the same only, it is very difficult to overthrow the evidence made in complaint petition as well as which comes during the course of enquiry under Section 202 Cr.P.C. and that appears to be consistent in nature. The Honourable Apex Court has also observed the same in the case of Sheonandan Paswan Vs. State of Bihar reported in (1987) 1 SCC 288, the relevant paragraph is extracted below.

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“It is a well established proposition of law that a criminal prosecution, if otherwise, justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political vendetta of the first informant or the complainant

Considering the facts stated above, I do not find any merit in the present quashing application and the same is, accordingly, dismissed.

(Vinod Kumar Sinha, J)

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