

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.43598 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- SITAMARHI

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1. Abhishek Sarawagi S/O Ratan Kumar Sarawagi R/O Mohalla- Sarawagi Chowk, Ward No.- 10, P.S. & Dist.- Sitamarhi

2. Ratan Kumar Sarawagi S/O Late Ram Prasad Sarawagi @ Murkidhar Sharawagi R/O Mohalla- Sarawagi Chowk, Ward No.- 10, P.S. & Dist.- Sitamarhi

3. Ishwar Chandra Rahi S/O Late Sone Lal Mahto Resident Of New Ziro Mile Chowk, P.S.- Ahiyapur, Dist.- Muzaffarpur. At Present Revenue Chowk Riga, Dist- Sitamarhi

.... Petitioner/s

Versus

1. The State Of Bihar

2. Adarsh Kumar Sarawagi S/O Biswanath Sarawagi R/O Mohalla- Sarawagi Chowk, P.S. & District- Sitamarhi

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Jha, Adv.

For the State : Mr. matloob Rab, App.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 28-11-2017

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 24.10.2011 passed by the learned Sub-divisional Judicial Magistrate, Sitamarhi Sadar in Complaint Case No. C-1181 of 2011, by which learned Magistrate has found prima facie case against the petitioners for offence under Sections 467, 468, 120-B of the Indian Penal Code.

2. Heard learned counsel for the petitioners and learned counsel for the State.

3. Counsel for the petitioners has submitted that it is



totally a civil dispute. The instant complaint has been filed on 05.09.2011 just to harass the petitioners on account of mutation order passed in favour of the petitioners dated 10.02.2009. The O.P. No. 2 had preferred appeal before DCLR by filing Mutation Appeal No. 31/10-11 which was dismissed on 30.09.2011.

4. Opposite Party No. 2 never challenged the aforesaid order before any competent authority. Further learned counsel for O.P. No. 2 has submitted that Jamabandi was earlier running in the name of complainant and on the basis of deed of partition dated 20.12.1988, without issuing notice to O.P. No. 2, the Circle Officer created Jamabandi in favour of petitioner no. 1 without any notice to O.P. No. 2, on the basis of registered partition deed dated 20.12.1988.

5. The complaint was filed by the O.P. No. 2 alleging therein that complainant and petitioner no. 1 are agnates. The family settlement took place by registered partition deed dated 19.12.1988. As per aforesaid partition deed, part of the plot as mentioned in the complaint petition was allotted in favour of the father of the complainant, for which Jamabandi was created bearing, Jamabandi Case No. 2266 and after creation of Jamabandi, Revenue receipts were issued in favour of father of complainant. Petitioner No. 1 and 2 got no concern with those lands. It is alleged that registered partition deed was in favour of complainant and in connivance with other



accused persons, the officers of the Revenue Department (Circle Office) created a Jamabandi in favour of petitioner no. 2, without issuing notice to the complainant.

6. It is alleged that the aforesaid Jamabandi was created in favour of petitioner no. 2, in pre-planned manner under conspiracy by Circle Officer, Riga vide Jamabandi Case No. 2049/2009-10.

7. It is admitted position that the aforesaid order of creation of Jamabandi by the Circle Officer, Riga was challenged by O.P. No. 2 before the learned DCLR by filing Mutation Appeal No. 31/10-11. The learned DCLR called for a report from the Circle Officer, Riga vide letter No. 627 dated 30.03.2011 pursuant to which the Circle Officer, Riga submitted report supporting the case of the petitioners, which is Annexure-3 to this petition and after submission of the report by the Circle Officer, Riga, learned DCLR, Sitamarhi rejected the appeal of the O.P. No. 2 vide order dated 30.09.2011

8. Learned counsel for the petitioner has submitted that O.P. No. 2 had appeared in the aforesaid appeal and he has full knowledge about the pendency of the aforesaid appeal. The instant case has been filed by Opposite Party No. 2 on 05.09.2011 during pendency of Mutation Appeal

9. It is also submitted that O.P. No. 2 has not preferred any revision before the Commissioner against the order of learned



DCLR passed in Mutation Appeal.

10. The counsel for the petitioner has relied upon a decision of the Hon'ble Supreme Court reported in **2009(4)PLJR (SC) 99, Md. Ibrahim & ors -vs- State of Bihar & anr**, wherein the Hon'ble Supreme Court has held as under:

“This Court has time and again drawn attention to the growing tendency of complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurize parties to settle civil disputes. But at the same, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes.”

11. In view of the ratio laid down by the Supreme Court in **Md. Ibrahim** (supra), this Court is of the view that continuation of criminal proceeding against the petitioners is abuse of process of law. Accordingly, the impugned order dated 24.10.2011 passed by the learned Sub-divisional Judicial Magistrate, Sitamarhi in Complaint Case No. C-1181 of 2011 along with entire criminal proceedings



against the petitioners is hereby quashed.

12. This criminal Miscellaneous application is allowed.

(Sanjay Priya, J)

sushma/-

AFR/NAFR	AFR
CAV DATE	...
Uploading Date	20/12/2017
Transmission Date	20/12/2017

