

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.39915 of 2013

Arising Out of PS.Case No. -187 Year- 2008 Thana -MADHUBANI COMPLAINT CASE District-
MADHUBANI

- =====
1. Ravindra Ram S/O Late Raja Ram Former Anchal Adhikari Laukahi, Police Station Laukahi, District Madhubani, Permanent Address S.D.M. Office Phulparas, Police Station Phulparas, District Madhubani.
 2. Bimal Kumar Mishra S/O Lakshmeshwar Mishra Karamchari, Anchal Office Laukahi, Police Station Laukahi, District Madhubani. Permanent Address At Jainagar Market Brahman Tole, Police Station Jainagar, District Madhubani.

.... Petitioner/s

Versus

1. The State Of Bihar.
2. Mahendra Yadav S/O Late Budi Lal Yadav Resident Of Village Rajaura Mathuara, Police Station Andhramath, District Madhubani.
3. Subhash Kumar Yadav s/o late Mahendra Yadav residing at village – Rajaura Mahtura PS. Andhramath, District- Madhubani

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ratanakar Jha, Adv.
For the Opposite Party/s : Mr. Rana Randhir Singh (App)
Mr. Saroj Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 15-05-2017

Heard both sides.

2. The petitioners filed this petition under Section 482 of the Cr.P.C (hereinafter referred to as the ‘Code’) to quash the order dated 16.03.2013 passed in Complaint Case No. 187/08 T.R. No. 2746/13 whereby the learned Judicial Magistrate found prima facie case under Sections 420, 467, 468, 120B of the Indian Penal Code.



3. The complainant Mahendra Yadav, now dead, filed complaint-cum-protest petition in Laukahi P.S. Case No. 01/2006 corresponding to G.R. No. 12/2006 in which the police after investigation submitted final form finding the dispute of civil nature and the accusation false, but after acceptance of final form the case proceeded on complaint. The complainant was examined. The complainant also examined his witnesses. The learned Judicial Magistrate Madhubani after considering the material on record dismissed the complaint petition under Section 203 of the Cr.P.C. Son of the complainant/Opposite party no. 3 preferred Cr. Revision No. 47/2012/236/2012 and the learned Sessions Judge, Madhubani allowed the revision petition and set aside the order dated 04.02.2012 passed by the learned Judicial Magistrate in complaint case no. 187/2008 and remanded the case for further enquiry. Thereafter, the Judicial Magistrate vide order dated 16.03.2013 found prima facie case to proceed against the petitioners under Sections 420, 467, 468, 120B of the Indian Penal Code.

4. Learned counsel for the petitioners assails the order dated 16.03.2013 passed in Complaint Case No. 187 of 2008 on the ground that on same and similar facts, the complainant filed Complaint Case No. 728 of 2003 against the petitioners and others. The date of occurrence was between 16.07.2002 to 25.01.2003. The



complainant alleged that the accused persons created forged documents with regard to land of Khata No. 319 Khesra No. 992 and 993, area 06 Bigha 13 Kattha 08 Dhurs which was purchased by the grand-father of the complainant on 31.07.1937.

5. The Judicial Magistrate found prima facie case on 07.02.2005. The petitioners preferred Cr. Revision 35/2005, which was dismissed on 26.06.2006. The petitioners preferred Cr. Misc. 36772 of 2006 and this Court quashed the order finding prima facie case in Complaint Case No. 728/2003 as well as the order of the learned Additional District & Sessions Judge dated 26.06.2006 passed in Cr. Revision No. 35/2005 whereby the order finding prima facie case was affirmed. Thereafter, the complainant again lodged the case on the basis of which Laukahi P.S. Case No. 101/2006 was registered and thereafter the complainant filed protest petition which was treated as Complaint Case no. 187/2008. The complainant changed the date of occurrence from 11.12.2004 to 05.08.2005 wherein in the earlier complaint petition the complainant has alleged the date of occurrence from 16.07.2002 to 25.01.2003. It is submitted that, in sum and substance, the verbal assertions and accusations are the same and similar in both the complaint cases. The complainant has not disclosed this fact in the complaint petition that on the same and similar facts the complaint petition earlier filed by him was dismissed and he



concealed this fact and filed the present complaint case in which the prima facie case under Sections 166, 167, 420, 467, 468, 469, 120B is found against the petitioners. It is submitted that order is bad and illegal.

6. On the other hand, learned counsel for the Opposite party no. 3 submitted that the date of occurrence is different and the accused persons in collusion with each other created Jamabandi by forging the documents.

7. It is evident from perusal of the order passed in Cr. Misc. 36772 of 2006 that the father of the Opposite party no. 2 filed complaint case No. 728/03 making allegation that the petitioners and other accused persons created Jamabandi by forging the documents with regard to Khata No. 319, Khesra No. 992 and 993. Learned Judicial Magistrate found prima facie case under different sections of the Indian Penal Code to proceed against the petitioners and others, but the petitioners and others filed Cr. Revision No. 35/05 before the learned Sessions Judge and vide order dated 26.06.2006 learned Additional District & Sessions Judge dismissed the revision finding no illegality in the order finding prima facie case to proceed against the petitioners. Against both the orders, the petitioners and others preferred Cr. Misc. 36772 of 2006 and Cr. Misc. 11902/2007. This court vide order dated 15.12.2006 and order dated 03.03.2008 passed



Cr. Misc. No. 36772 of 2006 and Cr. Misc. no. 11902/2007 quashed the orders finding *prima facie* case against the petitioners. This court has held that the petitioners and others are revenue officials and they passed the order creating Jamabandi after hearing the parties, therefore, their prosecution is malicious. The complainant without disclosing aforesaid facts lodged a fresh case bearing Laukahi P.S. Case No. 01/06 in which the police after investigation submitted final form finding the case false, but the complainant filed protest petition which was treated as complaint case no. 187/08. The learned Judicial Magistrate at the first instance did not find any case to proceed against the petitioners and accordingly dismissed the complaint. Complainant preferred revision petition and the revisional court remitted the case for further proceeding after setting aside the order, dismissing the complaint petition and thereafter the order impugned was passed.

8. From the facts I find that the on same and similar facts the complainant lodged the case against the petitioners and the entire order finding *prima facie* case was quashed by this court. The complainant only changed the date of occurrence. The petitioners are revenue officers of the Anchal and they did the works in pursuance of their official duty. Therefore, the prosecution of the petitioners on the second complaint petition is bad and illegal. Accordingly, order dated 16.03.2013 passed in complaint case no.187/2008 is quashed and



the quashing petition is allowed.

(Prabhat Kumar Jha, J.)

Vinita/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.06.2017
Transmission Date	08.06.2017

