

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.45725 of 2014

Arising Out of PS.Case No. -1262 Year- 2013 Thana -SITAMARHI COMPLAINT CASE District-
SITAMARHI

- =====
1. Nand Kishore Mahto Son of Late Ram Pd. Mahto
 2. Ram Dulari Devi Wife of Nand Kishore Mahto
 3. Sanjay Kumar Son of Nand Kishore Mahto, Petitioner No. 1 to 3 all of village - Basbitta tola Sri Nagar, P.S. - Majorganj, District- Sitamarhi.
 4. Shanti Devi Daughter of Late Jhingur Mahto of Village Basbitta Tola Sri Nagar, P.S. Majorganj, District - Sitamarhi, at present wife of Matiral Mahto of Village-Dhobiniya, P.S. - Malangwa, District - Sarlahi (Nepal).

.... Petitioner/s

Versus

1. The State of Bihar.
2. Nari Kishore Sinha Son of Late Ram Pd. Mahto Resident of Village – Basbitta Tole, Sri Nagar, P.S. - Majorganj, District- Sitamarhi.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar, Adv.

For the Opposite Party No.2: Mr. Arun Kumar, Adv.

Mr. Md. Hussamuddin Azad, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date: 13-12-2017

It is surprising that counter-affidavit/rejoinder/ supplementary counter-affidavit etc. have been filed by the parties for unjustifiable reason and the parties seem to have deviated from the main issue involved in the present case i.e. as to whether the order dated 04.09.2014 passed by the learned Judicial Magistrate, 1st Class, Sitamarhi, by which he has taken cognizance against the petitioners under various sections of the Indian Penal Code, is liable to be quashed or not?



2. The short facts of the case are that the Opposite Party No.2 namely Hari Kishore Sinha had filed a Complaint Case No. 1262 of 2013 (C) of 2013 before the court of learned C.J.M., Sitamarhi against the petitioners herein and others, inter-alia, alleging therein that the father of the complainant namely late Ram Prasad Mahto and late Indrajeet Mahto were brothers and on 24.09.1971 their cousin grand- father late Jhingur Mahto had given them 26 acres 11 decimals of land by Will. The said Jhingur Mahto had then died on account of illness on 21.10.1971. The father of the complainant and late Indrajeet Mahto, in the year 1977, with a view to prove the will had filed a case before the District Judge, Muzaffarpur bearing Testamentary Case No. 1 of 1977 and during the course of the proceedings of the said case, petitioner No.4 and her sister late Pano Devi who were daughters of late Jhingur Mahto, had appeared before the court and certified that the said Will was made in a proper manner, hence, had prayed that the said Will be declared as the last Will of late Jhingur Mahto, which had been made in favour of the father of the complainant and late Indrajeet Mahto. In the year 1979, the father of the complainant, namely Ram Prasad Mahto had died, hence in the aforesaid testamentary case the name of the three sons of late Ram Prasad Mahto, namely, petitioner no.1 herein, the complainant and the witness no. 1, namely, Jai Kishore Mahto were substituted. During the course of hearing of the



aforesaid case, the accused persons including the petitioners herein had conspired and filed a case with a view to oust the claim of the complainant and witness no.2 namely Jai Kishore Mahto had executed two sale deeds. The petitioner no.1 and the petitioner no.2 are alleged to have connived with the Circle Officer and the revenue worker and had fraudulently got mutation of the said land done in favour of one Anandi Prasad Singh and his father vide Mutation Case No. 83 of 2004-05 and 84 of 2004-05. It has been further alleged that the petitioners herein had, with a view to grab the share of the complainant in the aforesaid land, filed a Title Suit No. 67 of 2002 dated 22.5.2002 and subsequently had obtained a compromise decree in their favour. The aforesaid facts were not disclosed in the Testamentary Case No. 1 of 1977/ 3 of 2005, which further goes to show the bad intention on the part of the accused persons. On the basis of the aforesaid allegations, the Opposite Party No.2 had prayed for taking cognizance and punishing the accused persons. The learned Judicial Magistrate, 1st Class, Sitamarhi by an order dated 4.9.2014 passed in Complaint Case No. 1262 of 2013 (Trial No. 3607 of 2014) has been pleased to find that a prima facie case is made out against the petitioners herein and other accused persons under Sections 465, 120B, 466 and 467 of the Indian Penal Code.

3. The aforesaid order dated 04.09.2014 has been



challenged in the present proceedings.

4. The learned counsel for the petitioners has submitted that the present case is purely a case of civil dispute and the allegations levelled in the complaint petition do not disclose commission of any cognizable offence. It is further submitted that the present litigation, at the behest of the Opposite Party No.2, is malicious.

5. Per contra, the learned counsel for the Opposite Party No.2 has submitted that the deed of Will has already been authenticated by the judgment and decree dated 29.08.2006 passed in the aforesaid Probate Case, as well as the same has been approved by the learned Additional District Judge-cum- Fast Track Court-I, Sitamarhi and further the said judgment and decree in the probate case has also been proved in F.A. No. 181 of 2006 by an order dated 29.08.2016 passed by this Court inasmuch as the petitioner no.4 has withdrawn the said case. It has also been contended that the allegations levelled in the complaint petition constitute the offences under Sections 3, 53 and 54 of the Prohibition of Benami Property Transaction Act, 1988 as well as Section 82 of the Registration Act, 1908. The learned Counsel for the Opposite Party No.2 has relied upon a judgment rendered by this Court on 10.09.2001 in Cr. Misc. No. 13308 of 1997 [Kedar Singh @ Kedar Nath Singh versus State of



Bihar] and one reported in AIR 1972 (S.C.) 928 [Dharamdeo Rai vs. Ramnagina Rai]

6. The records bear it out that the opposite party no.2 has filed Title Suit No. 328 of 2015 for setting aside the sale deeds executed by the petitioner no.4 and her sister in favour of petitioner no.2, which incidentally also form part of the allegations levelled in the present case and the same has not been controverted by the learned counsel for the opposite party no.2.

7. I have gone through the materials on record and have also heard the learned counsel for the petitioners and the Opposite Party No.2 at length. On perusal of the records, especially the complaint petition, it is apparent that the allegations levelled in the complaint petition are purely in the nature of civil dispute and the same has been sought to be given a colour of a criminal offence with an ulterior motive to pressurize the accused persons. It is further noticed, not controverted by the Opposite Party No.2, that the Opposite Party No.2 has filed a title suit bearing Title Suit No. 328 of 2015 for setting aside the sale deeds in question and the same is pending adjudication. The allegations levelled in the complaint petition also pertain to the said sale deeds. It is also clear that there is inter se dispute between the family members inasmuch as one party claims his right over a portion of land on the strength of a Will, while



the other parties claims ownership of the land regarding which sale deeds have been executed, on the strength of being the only direct legal heir of the owner of the said land. Thus, it is manifest that at best the allegations levelled in the complaint petition are disputes of a civil nature and no criminality is involved.

8. The learned counsel for the Opposite Party No.2, while referring to the aforesaid two judgments, noted herein above, has completely misdirected himself in advancing arguments on the basis of the said judgments inasmuch as the said judgments pertain to Section 82 and 83 of the Registration Act, 1908 vis a vis Section 482 of the Code of Criminal Procedure. In the present case, the learned Magistrate has not taken cognizance under sections 82/83 of the Registration Act, 1908, hence the applicability of the aforesaid two judgments do not arise for consideration.

9. It is a well settled law that any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. Reference be had to a case reported in (2006) 6 SCC 736 (**Indian Oil Corporation v. NEPC India Ltd.**). The Hon'ble Apex Court in the said judgment i.e. **Indian Oil Corporation v. NEPC India Ltd.** (supra) has further cautioned that there is growing tendency in business circles to convert purely civil disputes into



criminal cases since civil law remedies are time-consuming, as such any effort to settle civil dispute and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.

10. The Hon'ble Apex Court in the case of "**Joseph Salvaraja v. State of Gujarat and others**", reported in (2011) 3 SCC (Crl.) 23, held as under:-

"In our opinion, the matter appears to be purely civil in nature. There appears to be no cheating or a dishonest inducement for the delivery of property or breach of trust by the appellant. The present FIR is an abuse of process of law. The purely civil dispute, is sought to be given a colour of a criminal offence to wreak vengeance against the appellant. It does not meet the strict standard of proof required to sustain a criminal accusation. In such type of cases, it is necessary to draw a distinction between civil wrong and criminal wrong as has been succinctly held by this Court in *Devendra v. State of U.P.*, (2009) 7 SCC 495, in which, it was held (para-27) that a distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made



out.”

11. The Hon’ble Apex Court in a judgment reported in (2007) 12 SCC 1 (**Inder Mohan Goswami v. State of Uttaranchal**), after considering series of decisions has observed as follows:

“46. The court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. On analysis of the aforementioned cases, we are of the opinion that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. Inherent jurisdiction of the High Courts under Section 482 Cr.P.C. though wide has to be exercised sparingly, carefully and with caution and only when it is justified by the tests specifically laid down in the statute itself and in the aforementioned cases. In view of the settled legal position, the impugned judgment cannot be sustained.”

12. The Hon’ble Apex Court in a leading case, reported in 1992 Supp (1) SCC 335 (**State of Haryana v. Bhajan Lal**) has laid down guidelines and enumerated category of cases where inherent power under Section 482 Cr. P. C. can be exercised by the High Courts. It would be useful to quote paragraph-102 of the said judgment i.e. State of Haryana v. Bhajanlal (supra):



“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the



FIR or complaint and the evidence collected in support of same do not disclose the commission of any offence and make out a case against the accused.

- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without any order of a Magistrate as contemplated under Section 155(2) of the code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to



private and personal grudge.”

13. Having regard to the facts and circumstances of the case as also the law laid down by the Hon’ble Apex Court, as referred to herein above, it is clear that the allegations levelled in the complaint petition are purely of a civil nature and constitute civil dispute which has been given a colour of criminal case and further the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, the same do not constitute any criminal offence nor disclose commission of cognizable offence against the petitioners herein, hence the order dated 04.09.2014 passed by the learned Judicial Magistrate, 1st Class, in Complaint Case No.1262 of 2013 (Trial No. 3607 of 2014) is fit to be set aside.

14. The petition is allowed and the order dated 04.09.2014 passed by the learned Judicial Magistrate, Ist Class, Sitamarhi in Complaint Case No. 1262 of 2013 (Trial No. 3607 of 2014) is hereby quashed.

(Mohit Kumar Shah, J)

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