

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.29205 of 2011

Arising Out of PS. Case No. – 283 Year- 2005 Thana Jagdishpur District- BHAGALPUR

- =====
1. Om Prakash Pandey, son of Late Surendra Pandey, resident of Village Phulwaria, P.S.-Jagdishpur, Dist.-Bhagalpur
 2. Raja Tiwary, @ Rajesh Tiwary, son of Vinodanand Tiwary
 3. Vivekanand Tiwary, son of Sita Nath Tiwary
 4. Kamodanand Tiwary, son of Sitanath Tiwary
- Petitioner no. 2 to 4 are residents of village Vishambharchak, P.S. Amarpur, Dist.-Banka
5. Shivcharan Yadav @ Shivchh Yadav, son of Late Ghoiti Yadav
 6. Santosh Yadav, son of Shivcharan Yadav
- Both residents of Village Phulwaria, P.S.-Jagdishpur, Dist.-Bhagalpur

.... Petitioners

Versus

1. The State Of Bihar
2. Satya Prakash Pandey @ Madhukar Pandey, son of Late Shivendra Prasad Pandey, resident of village Phulwaria, P.S.-Jagdishpur, Dist.-Bhagalpur

.... Opposite Parties

=====

Appearance:

For the Petitioners : Mr. Saket Tiwary, Advocate
Mr. Saneev Kumar Dubey, Advocate

For the OP No. 2 : Dr. Manoj Kumar, Advocate
Ms. Sweety Sinha, Advocate

For the State : Mr. R.P. Nat, APP

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 18-04-2017

Heard learned counsel for the petitioners, learned counsel for the opposite party no. 2 and learned APP for the State.

2. The present petition has been filed for quashing the order dated 16.02.2010 passed by the learned Judicial Magistrate Ist Class, Bhagalpur in Complaint Case No. 325 of 2007 by which cognizance has been taken against the petitioners for the offence punishable under Sections 379, 504 and 323 of the Indian Penal Code.



3. The prosecution story in short is that the complainant was tilling his land registered as Khesra No. 75, measuring 2 acres 25 decimals, when the petitioners came with arms and demanded money in order to allow the OP No. 2 to cultivate the land. The petitioners took away the crops that were cut and kept by the OP No. 2 on the said land.

4. Mr. Saket Tiwary, learned counsel for the petitioners submits that the entire criminal proceedings is an abuse of process of the Court and liable to be quashed as such. It is stated that the petitioner no. 1 and the OP No. 2 are brothers. The petitioner nos. 2, 3 and 4 are other family members while petitioner nos. 5 and 6 are employees, who are tillers. The complaint has been filed by OP No. 2 in a matter essentially involving a civil dispute, which is evident from the very fact that the OP No. 2 has subsequently filed Title (Partition) Suit No. 401 of 2014 which is pending in the Court of Sub Judge I, Bhagalpur. In the plaint, the OP No. 2 has made averment that Gayatri Devi died on 15.04.1997 leaving behind her only daughter Jayanti Devi, who in turn died on 19.03.2003, leaving behind the petitioner no. 2 and the OP No. 2 as her surviving sons. The property left by Gayatri Devi thus devolved on Jayanti Devi and subsequently upon the petitioner no. 1 and the OP No. 2. It is therefore, submitted that the petitioner no. 1 is the joint owner of the subject land along with OP No. 2 and hence the offence under Section 379 of the Indian Penal Code is not made out against the petitioners. The complaint had been filed only to put



pressure upon the petitioners. Such complaint was converted into FIR and after due investigation by the police, final form was submitted treating the matter as a land dispute and it is only upon protest petition that the instant order of cognizance was passed.

5. Learned counsel for the OP No. 2 submits that cognizance has rightly been taken as the petitioners took away the crops that had been cut and had been kept by the OP No. 2, and for which act the petitioners are criminally liable.

6. Having heard the parties and on careful consideration of the materials on record, this Court finds merit in the application. The Apex Court in *State of Haryana and Ors. vs. Bhajan Lal and Ors.*, reported in 1992 (1) SCC 335 has laid down various parameters by way of illustration where the inherent power under Section 482 Cr. P.C. may be exercised, *inter alia*, as follows :

"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 face 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 the 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 an 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”.

7. In the instant case, the fact that the OP No. 2 himself has filed Title (Partition) Suit No. 401 of 2014 with the averment that the petitioner no. 1 and the OP No. 2 are the legal heirs upon whom the property of Gayatri Devi/Jayanti Devi devolved, clearly shows that the OP No. 2 himself was aware that the dispute between the parties was primarily of civil nature. The petitioner no. 1 as such being joint owner



of the land in question along with OP No. 2, could not be said to have committed theft of the cut trees so long such land was not partitioned by metes and bounds. In the backdrop of the facts and circumstances of the case, it is manifest that the criminal proceeding has been instituted by the Opposite Party No. 2 with mala fide and with ulterior motive. This Court is of the view that continuance of the criminal proceedings would thus amount to abuse of process of the Court and accordingly the impugned order dated 16.02.2010 passed by the learned Judicial Magistrate Ist Class, Bhagalpur taking cognizance in Complaint Case No. 325 of 2007 against the petitioners is hereby quashed.

8. The petition stands allowed.

Chandran/BT

(Vikash Jain, J)

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	24.04.2017
Transmission Date	24.04.2017

