

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.39786 of 2014

Arising Out of PS.Case No. -182 Year- 2012 Thana -COMPLAINT CASE District- JAMUI

- =====
1. Tarakant Jha @ Taranath Jha Son of Late Lakshedi Jha Resident of Village Laxmipur, P.S. - Laxmipur, District Jamui.
 2. Umakant Paswan/ then Halka Karmchari Son of Late Bhupeshwar Paswan R/o Village + P.S. Laxmipur , District- Jamui
 3. Shambhu Yadav Son of Sri Basudeo Yadav
 4. Basudeo Yadav Son of Late Chigar Yadav Both Resident of Village- Sankhapri , P.S. -Laxmipur, District -Jamui

.... Petitioner/s

i. Versus

1. The State of Bihar
2. Pawan Yadav Son of Subhash Yadav Resident of Village - Tengahra Tola- Sankhapri , P.S. -Laxmipur, District - Jamui

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Prakash Mahto, Advocate

For the Opposite Party/s : Mr. Navin Kumar Pandey (APP)

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR
UPADHYAY
ORAL ORDER

4 30-08-2017 Heard learned counsels for the petitioners and the State. No one appears for the opposite party No. 2 despite filing of Vakalatnama.

This case was on the earlier occasion heard at length and in order to facilitate counsel appearing for the Opposite Party No. 2, the matter was adjourned. Today when the case was called out neither the counsel for the opposite party No. 2 is present nor any prayer was made for adjournment or accommodation on account of any inconvenience or justifiable reason not to attend the Court.



In the aforesaid circumstances the Court is left with no option but to decide the case on the basis of materials available on the record and hear the counsel for the petitioners as this is the matter of 2014.

The petitioners in the instant case have challenged the order dated 7.2.2014 passed by the Judicial Magistrate in Complaint Case No. 182C/2012 whereby the learned Judicial Magistrate took cognizance under Section s467, 468, 120B and 323 of the Indian Penal Code.

Counsel for the petitioners submits that petitioner No. 1 is Anchal Adhikari whereas the petitioner No. 2 is the then Halka Karamchari and they have performed their official duty and the order in Jamabandi case was passed in accordance with the settled procedure prescribed under the law. Against the order passed in Jamabandi case, aggrieved person has remedy by way of appeal or revision. The present case is precisely an abuse of the process of law and even covered by the judgment of the Apex Court in the case of **State of Haryana Vs. Choudhary Bhajan Lal: AIR 1992 SC 604.**

Counsel for the petitioners further submits that the order in the Jamabandi case was passed before the petitioner No. 1 joined the office as Anchal Adhikari and as such the allegation is



not relatable to the petitioner No.1. The allegation as to assault is also designed to make out a case for taking cognizance in the instant case. In fact, no such incident took place as on the date of such allegation the petitioner no. 1 was not even in the office of the Anchal Adhikari and as such the allegation on its face value is patently false.

Counsel submits that the issue with regard to irregularity in the matter of deciding the case No. 264 of 2003 and issuing rent receipt, ipso facto, does not constitute any criminal offence. The continuance of the present case under the aforesaid circumstance is abuse of the process of law in view of the fact that in the process of creation of Jamabandi in mutation case mutation notice are issued by the office and thereafter on enquiry undertaken by the authorities at various levels including at the level of Halka Karamchari, Circle Inspector, etc. and as such against the order passed in Jamabandi case filing of the present complaint case appears to be an abuse of the process and the entire action of order taking cognizance and thereafter approval would amount to abuse of process of law and as such this Court should exercise jurisdiction under Section 482 of the Code of Criminal Procedure and interfere with the ongoing criminal proceedings originated from Complaint Case No. 182C/2012.



Having regard to the facts and circumstances discussed above, the Court is of the considered view that the present case is abuse of the process as it is vexatious proceeding and covered under the exception carved out in the Apex Court judgment in the case of **Choudhary Bhajan Lal (supra)**.

In the facts and circumstances stated above, the application is allowed and the order taking cognizance dated 7.2.2014 is quashed.

(Anil Kumar Upadhyay, J)

S.Pandey/-

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