

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.31135 of 2011

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

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1. Pramila Jha W/O Late Gopi Krishan Jha, Resident of Mohalla- Kajipur, Qr. No. 1 Road No. 2, P.S Kadamkuan, District - Patna.
2. Sushil Mishra Son of Late Bhavishya Mishra, Resident of Begusarai, P.S and District - Begusarai.
3. Ankit Kumar (Mouny) Son of Sushil Mishra, Resident of Village - Begusarai, P.S and District - Begusarai.

.... Petitioners

Versus

1. The State of Bihar
2. Deepak Kumar Son of Ganga Sao, Resident of Mohalla ,Kajipur, Quarter No.1, Road No.2, P.O Bankipur, P.S- Kadam Kuan, District - Patna.

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Naresh Dikshit, Advocate
For the State : Mr. Jitendra Kr. Singh, APP
For the O.P. No. 2 : None

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 25-04-2017

Heard learned counsel for the petitioners as well as learned APP for the State.

2. The present petition has been filed for quashing the order dated 20.07.2011 passed by the learned Judicial Magistrate, Ist Class, Patna whereby the discharge petition filed on behalf of the petitioners in Complaint Case No. 355(C) of 2007 has been rejected.

3. The short facts of the prosecution case are that the complainant had been living in a hut constructed on Government land. It is alleged that on 06.02.2007 at 7 pm, the accused persons along with 5-6 persons entered his house and started abusing him. On protest, the



complainant was assaulted with intention to kill him and when the wife, mother and brother-in-law of the complainant rushed there, they were also assaulted by the accused persons. It is further alleged that accused no. 1 took away Rs. 2200/-from the pocket of the complainant claiming rent from the complainant as he was living by the side of the Government quarter allotted to the petitioner no. 1.

4. Mr. Naresh Dikshit, learned counsel appearing on behalf of the petitioners, submits that this is a glaring case of malicious prosecution. The petitioner no. 1 was a Government servant at the relevant time working in the office of the District Magistrate, Patna. On the complainant's own showing in the complaint, he was an encroacher on Government land. The complaint has been filed in retaliation to an earlier FIR instituted on 07.02.2007 on the basis of the fardbeyan of the petitioner no. 1, inter alia, alleging therein that opposite party no. 2 and other persons, who were encroachers outside the Government quarters, used to create nuisance and misbehaved with her after entering her house the previous night. After due investigation by the police, charge sheet has been submitted against the accused persons including the opposite party no. 2. The petitioners' case is further substantiated in view of the fact that the encroachers including the opposite party no. 2 were subsequently evicted on 27.06.2007 in terms of the report submitted to the Incharge District Magistrate by the Police Control Room, Patna.



5. Despite service of notice on the opposite party no. 2, none appeared on his behalf at the time of admission as evident from the order dated 13.02.2014. Notice in the hearing matter was once again directed to be issued by the said order pursuant to which the opposite party no. 2 entered appearance. None however appears on his behalf when the matter is called today.

6. Having heard learned counsel for the petitioners as well as learned APP for the State and on careful consideration of the materials on record, this Court finds merit in the petition. It is evident from a plain reading of the complaint that the opposite party no. 2 admits himself to be an encroacher upon Government land and has made accusation with regard to the alleged occurrence of 06.02.2007 when the petitioner no. 1 being a Government servant is said to have entered the hut of the opposite party no. 2 and upon the order of petitioner no. 1, petitioner nos. 2 and 3 committed assault upon the opposite party no. 2. Such complaint has been filed after the petitioner no. 1 herself instituted FIR against the opposite party no. 2 and other persons alleging misbehavior with her. The complaint is clearly vengeful and retaliatory in nature and does not inspire confidence with regard to the veracity of the accusations leveled therein. It also transpires that pursuant to the FIR, charge sheet was submitted against the opposite party no. 2 and other persons, who were subsequently also evicted from the Government land.



7. This Court, therefore, is of the view that continuance of criminal prosecution against the petitioners would, in the facts and circumstances of the case, amount to abuse of process of the court.

8. Accordingly, the impugned order dated 20.07.2011 passed by the learned Judicial Magistrate, Ist Class, Patna whereby the discharge petition filed on behalf of the petitioners in Complaint Case No. 355(C) of 2007 has been rejected, is hereby quashed. The petition stands allowed.

9. Registry is directed to send back the lower court records without any delay.

(Vikash Jain, J)

B.T/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	27.04.2017
Transmission Date	27.04.2017

