

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.22243 of 2014

Arising Out of PS.Case No. -218 Year- 2012 Thana -SAMASTIPUR District- SAMASTIPUR

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1. Chandra Shekhar Jha Son of Late Bhola Jha, Resident of Village and P.O.- Patore, P.S.-Laheriyasarai, District-Darbhanga.
 2. Sushil Chandra Jha Son of Late Subhankar Jha, Resident of Village-Tarauni, P.s.-Sakari, District-Darbhanga at present resided at Village-Pandasarai, P.S.- Laheriyasarai, District-Darbhanga.
 3. Pramanand Jha Son of Late Yaddu Jha, Resident of Village-Narahan, P.S.- Bibhutipur, District-Samastipur.
 4. Satish Chandra Jha son of Late Kamala Kant Jha, resident of Village Supaul, P.S. Angarghat, District Samastipur.
 5. Satendra Jha, son of late Anant Jha, resident of Village- Supaul, P.S. Angarghat, District Samastipur.
 6. Sarat Kumar Kanth son of late Srikant Kanth, Katib License No.- (Deed Writer)- 209/2001, Resident of Village- Harpur Rewari, P.S. Angarghat, District- Samastipur.
 7. Rambalak Rai, son of Ram Prit Rai, Resident of Village- Barnaama tole, P.S. Angarghat, District Samastipur.

.... Petitioner/s

Versus

1. State of Bihar
2. Sri Bhadra Jha, son of Late Nand Kishore Jha, resident of Village- Supaul (Harpur Rewari) Police Station- Angarghat, District Samastipur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Pankaj Kumar Jha

For the Opposite Party No.2 : Mr. Lal Babu Singh

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 12-07-2017

Heard the learned counsel for the petitioners and the learned counsel for the opposite party no.2, namely, Lal Babu Singh.

2. The opposite party no.2 is said to have filed a Complaint Case No. 1068 of 2012 before the court of learned Chief Judicial Magistrate, Samastipur on 28.08.2012, inter alia, alleging therein that the opposite party no.2 is having a piece of land



admeasuring 7 katha 10 dhoor, out of which the accused persons, by forging and cheating, swindled 1 katha 10 dhoor. It has been further alleged that the opposite party no.2 had filed a Title Suit before the learned Munsif for annulling the gift deed dated 09.06.1984, which was said to have been executed by one Most. Durga Devi appertaining to the same land, however, the same was dismissed by the learned Munsif by order dated 13.07.2010, which has been annexed as Annexure-3 to the petition. It has been stated that the said order passed by the learned Munsif has been challenged in Title Appeal No. 73 of 2010 by the opposite party No.2. The opposite party no. 2 has further alleged that he is in possession of the land in question since long and the accused persons have forcibly and under conspiracy taken some portion of the land. It appears that the said complaint was sent for verification by the police under Section 156(3) Cr. P.C. and Samastipur Town P.S. Case No. 218 of 2012 was registered for the offence punishable under Sections 420, 406, 467, 471, 468, 329/34 of the Indian Penal Code.

3. It appears that the learned CJM, Samastipur by an order dated 29.08.2013 passed in the connected case, after receipt of the charge sheet, had taken cognizance of the offence punishable under Sections 420, 467, 406, 468, 471, 329/347/34 of the Indian Penal Code against the petitioners herein (accused persons).



4. The petitioners have approached this Court for quashing of the said order dated 29.08.2013 passed by the learned Chief Judicial Magistrate, Samastipur in connection with Samastipur Town P.S. Case No. 218 of 2012.

5. The learned counsel for the petitioners submits that the present dispute is purely of a civil nature and a civil litigation is going on between the parties.

6. The opposite party no.2 vehemently opposes the prayer of the petitioners for quashing the order 29.08.2013. It has been submitted that the police has investigated the case and after having found the case true against all the accused persons- petitioners, charge sheet was filed against them.

7. Having heard the parties and having perused the materials on record, I find that the allegations levelled in the present case do not constitute any criminal offence, the dispute is civil in nature and civil litigation is going on between the parties.

8. I may hasten to add at this juncture that the Hon'ble Apex Court has observed in a catena of decisions 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.

9. 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."

10. 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.”

11. In fact, 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 relevant portion of 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.

Xx xxx xx xx xx



(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.

Xx

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(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.”

12. Having regard to the facts and circumstances of the case as also the law laid down by the Hon’ble Apex Court on the subject matter it is clear from the contents of the instant complaint that the dissension is purely civil in nature but it has been given a colour of criminal case only with a view to pressurise the accused persons to fulfil the demands of the opposite party no.2. Moreover, the instant case is a clear case where the remedies lie before the competent court of civil jurisdiction.

13. I further find that neither the allegations made in the complaint petition, even if they are taken at their face value and accepted in their entirety, constitute any prima facie offence nor disclose commission of cognizable offence as against the petitioners i.e. the accused persons and secondly, a bare perusal of the complaint shows that the nature of entire dispute is civil and does not involve



any criminal offence. Hence, the instant case would fall under clause (1) to (3) of paragraph no. 102 of the aforesaid judgment rendered in the case of Bhajan Lal (supra), so as to warrant exercise of inherent power u/s 482 Cr.P.C. as well as is covered by the well settled law laid down by the Hon’ble Apex Court, as discussed herein above in the preceding paragraphs.

14. In such view of the matter, the instant petition is allowed, the order dated 29.08.2013 passed by the learned Chief Judicial Magistrate, Samastipur in Complaint Case No. 218 of 2012 (S.R. No. 2538/ 2012) is hereby quashed and consequently, the entire proceedings emanating therefrom also stands quashed.

15. There shall be no order as to costs.

(Mohit Kumar Shah, J)

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NAFR	NAFR
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