

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.33496 of 2013

Arising Out of PS.Case No. -1000 Year- 2012 Thana -PATNA COMPLAINT CASE District-
PATNA

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1. Suresh Prasad Singh S/O Late Bhujhawan Singh Resident Of Mohalla-
Rukanpura, P.O.- B.V College, P.S.- Rupaspur, District- Patna

.... Petitioner/s

Versus

1. The State Of Bihar
2. Shri Rajeshwar Singh S/O Late Naumi Lal Singh Resident Of Mohalla-
Rukanpura, P.O.- B.V College, P.S.- Rupaspur, District- Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Binod Kumar Sinha

For the Opposite Party/s : Mr. Jagdhar Prasad(App)

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

4 10-01-2017 This application has been filed for quashing order dated

1.7.2013 passed by Sri Rajendra Kumar Singh, Judicial Magistrate

Ist Class, Danapur in Complaint Case No.1000(C) of 2012, by

which the learned Magistrate finding prima facie case under

Section 193, 196A, 120B IPC, issued process against the accused

persons including the petitioner.

Case of the complainant in short is that at the time of

widening of Bailey Road, out of 24 decimals of land of the

ancestors of Opposite Party No.2, 23 decimals were acquired by

the State Government vide Land Acquisition Case No.11/2/1915-

16 and one decimal of land remained in possession of the



ancestor of Opposite Party No.2 and said one decimal land was gifted to the Opposite Party No.2 on which he came in peaceful possession of the same. It is his case that he started construction over it but the petitioner, who is owner of Plot No.723, which is adjacent to the land of one decimal land in question, filed a complaint petition before the Circle Officer, Danapur alleging encroachment on the basis of which Demarcation Case No.23/2012-2013 was instituted and the Circle Officer directed to stop the work. Further the Circle Officer had directed to measure the land, in question, which was measured by Amin (Accused No.2) in presence of the petitioner and the Opposite Party No.2. Further the case of the complainant is that he requested the Circle Officer, Danapur between 1.8.2012 to 28.8.2012 to dispose of the Demarcation Case No.23/12/2013 but later on 29.8.2012, he was informed that in the light of report of the Amin and the Circle Officer, the case has already been disposed of on 2.8.2012. The further case of the complainant is that after going through the report of the Amin, it was detected that the Amin had manipulated in collusion with the Petitioner. It is also case of the complainant that in order dated 2.8.2012, it had not been shown that he had



encroached land but at instance of the Circle Officer, Danapur, Anchal Amin at the inducement of petitioner created forged document.

As such the complainant has prayed for prosecution of the accused persons including the petitioner under Section 193, 196 and 120B of the I.P.C.

The learned court below after enquiry under Section 202 of the Cr.P.C. finding prima face case under Section 193, 196 and 120B of the Indian Penal Code against the petitioner and others, issued processes against them, which is under challenge in the present application.

It has been submitted on behalf of the petitioner that from perusal of the complaint petition as well as materials available on the record, it appears that there is nothing against the petitioner except that he approached the Circle Officer against encroachment made by the Opposite Party No.2, on which Demarcation Case No.23/2012-2013 was instituted. It has further been submitted that so far allegation that on the inducement of petitioner, Anchal Amin had created forged document in collusion with co-accused. There is nothing



available on the record except averment and whatever allegation are there that is against the Amin and the Circle Officer, but processes have not been issued against the Circle Officer. Further so far manipulation in official record is concerned, that is in custody of the Amin and the Circle Officer as such petitioner had no occasion to manipulate the same and only on the basis of vague allegation of inducement, learned Magistrate ordered for issuing process against the petitioner also though no case either under Section 193 or 196 or U/S 120B IPC is made out against the petitioner, as such the same is fit to be quashed and if it is allowed to continue, it will only be an abuse of the process of the court.

Heard A.P.P., who has opposed the submissions but he also could not point out any evidence/materials to show that offence under Section 193, 196 or under Section 120B is made out against the petitioner.

Nobody appears on behalf of the Opposite Party No.2, although Opposite Party No.2 had already appeared in pursuance of notice issued by this court.

After perusal of the entire record, it appears that there is



nothing against the petitioner except that he has lodged complaint regarding encroachment of the land on which Demarcation Case No.23/2012-2013 and there is allegation that on his inducement, forged document was created by other accused persons. However, there is nothing available on the record in support of above allegation and it seems as demarcation case was instituted on the application of the petitioner, the above allegation is levelled against the petitioner.

As such, I find that no case is made out against the petitioner under Sections 193, 196 I.P.C. or U/S 120B IPC and order of issuance process is an abuse of the process of the court.

Accordingly, this application is allowed. Order dated 1.7.2013 passed by the learned court below in Complaint Case No.1000 (C) of 2012 to the extent against the petitioner only is quashed.

Considering the aforesaid facts, this application is allowed.

(Vinod Kumar Sinha, J)

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