

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.36417 of 2014

Arising Out of PS.Case No. -1304 Year- 2010 Thana -BUXAR COMPLAINT CASE District-
BUXAR

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1. Ram Chandra Prasad Keshari son of Late Ram Jiwan Ram Keshari
2. Krishna Kumar Keshari
3. Ram Kumar Keshari
4. Shiv Kumar Keshari All sons of Ram Chandra Prasad Keshari
5. Nathun Sah Teli
6. Binod Sah Teli Both sons of Shivrath Sah null
7. Chhathu Sah Teli Son of Late Gaya Sah
8. Nayeem Miyan son of Late Rahman Miyan
9. Jagdish Prasad Keshari Son of Jawahar Lal Keshari All residents of village-
Purana Bhojpur, P.S. Dumraon, District Buxar
10. Tarak Prasad Keshari son of Late Bihari Lal Keshari resident of village- Purana
Bhojpur, P.S. Dumraon, District Buxar, At present residing at Gauripur Chauthama,
P.O. Garifa, Holding No. 184, District- 24 Pargana, West Bengal

.... Petitioners

Versus

1. The State of Bihar
2. Jitendra Kumar Shrivastava Son of Late Mahendra Lal, resident of village +
P.O.- Purana Bhojpur, P.S.- Dumraon, District Buxar

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Mishra, Advocate
For the Opposite Party/s : Mr. Abhishek Anand, Advocate
For the State : Mr. Rana Randhir Singh, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 08-11-2017

Heard learned counsel for the petitioners, Sri
Abhishek Anand, Advocate, attached with Mr. Digvijay
Kumar Ojha, learned Advocate on Record, for Opposite Party
No. 2 and learned Additional Public Prosecutor for the State.

2. The petitioners, in the present case, are
seeking quashing of the order dated 18.02.2013, passed in
Complaint Case No. 1304(C) of 2010/1516, Tr. No. 13 passed



by Sri L.K. Mishra, learned Judicial Magistrate, 1st Class, Buxar, by which the learned Magistrate has taken cognizance of the offence under Section 323 of the Indian Penal Code and issued summon to the petitioners.

3. Learned counsel for the petitioners submits that a bare perusal of the complaint petition would show that there was a land dispute over a piece of land purchased by accused no. 2 to 7. The complainant alleged that accused persons were encroaching upon the land which belonged to Mahavir Mandir and Maszid. A complaint case was earlier lodged by the complainant alleging that the said sale deed which accused nos. 2 to 7 had obtained from one Bihari Lal Keshari was got executed in respect of the land which belonged to the Mandir and Maszid, as such the same was fraudulent. The complaint case was, however, quashed by the Hon'ble High Court vide order dated 18.05.2010 passed in Cr. Misc. No. 10238/2008 (Annexure-3 to the present application).

4. Learned counsel submits that after quashing of the said complaint case, the present complaint case came to be registered. The whole allegations are nothing but repetition of the old complaint and further that the accused persons are



encroaching upon the land which belonged to the temple, they have constructed a motor garage thereon, and on 12.12.2010, when complainant went to stop them and asked the accused no. 8 that they should not encroach upon the land which belonged to the temple and they should shift the garage somewhere else, it is alleged that all the accused persons assembled there after sometime and started abusing the complainant and tried to beat him.

5. Learned counsel submits that the complaint has the over tones and flavour of a civil dispute which has been gave colour of a criminal proceeding on a totally vague allegations.

6. One of the submissions of learned counsel representing the petitioners is that the order taking cognizance is barred by limitation in terms of Section 468 Cr.P.C.

7. On the other hand, learned counsel representing the Opposite Party No. 2 submits that no doubt the complainant has referred about the earlier disputes with respect to the present piece of land, but the present complaint came to be lodged, when on 12.12.2010, the complainant objected to the construction of the garage on the disputed land which according to him belonged to Mahavir Mandir and



Masjid, and at that time the accused persons assembled, abused the complainant and tried to beat him, therefore, the present complaint has been rightly lodged and the order taking cognizance by the learned Magistrate is based on the materials which showed a *prima facie* case.

8. So far as the ground as regards limitation under Section 468 Cr.P.C. is concerned, the same is not fit to be accepted. In the case of **Darshan Singh Saini Vs. Sohan Singh and Another** reported in (2015) 14 SCC 570; the Hon'ble Apex Court reiterated that the date of filing of the complaint would be relevant and not the date of taking cognizance. Paragraph-8 of the judgment of the Hon'ble Apex Court is quoted hereinunder for ready reference:

“8. We have considered the aforesaid contention advanced at the hands of the learned counsel for the appellant. It is apparent from the submissions advanced by the learned counsel for the appellant, that he is calculating limitation by extending the same to the order passed by the Judicial Magistrate. First Class, Nalagarh, on 6-2-2009. The instant contention is wholly misconceived on account of the legal position declared by a Constitution Bench of this Court in *Sarah Mathew v. Institute of Cardio Vascular Diseases*, wherein in para 51, this Court has held as under: (SCC p. 102)

“51. In view of the above, we hold that for the purpose of computing the period of limitation under



Section 468 CrPC the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance. We further hold that *Bharat Kale* which is followed in *Japani Sahoo* lays down the correct law. *Krishna Pillai* will have to be restricted to its own facts and it is not the authority for deciding the question as to what is the relevant date for the purpose of computing the period of limitation under Section 468 CrPC.”

9. The second ground urged by learned counsel for the petitioners has got force, inasmuch as on perusal of the complaint petition, this court finds that the complainant has himself stated about the nature of the dispute with respect to the land in question. Accused nos. 2 to 7 have admittedly got a sale deed in respect of the said land and the said sale deed is a valid piece of document of title as on today is also not in dispute. The only allegation against the accused persons are that when the complainant asked accused no. 8 not to construct the garage by way of encroachment and requested him to shift the garage somewhere else, after sometime, all the accused persons came there and abused the complainant and tried to beat him.

10. This part of the allegations is apparently an ornamental allegations having over-tones and flavour of



converting a civil dispute in a criminal proceeding. The allegations are also vague as nothing may be inferred against the accused persons.

11. In the opinion of this court, the learned Magistrate has passed the order taking cognizance in a routine and mechanical manner. This court finds that further continuation of the proceeding, in the facts of the present case, would only be an abuse of the process of court.

12. In the result, the impugned order, as aforesaid, is set aside and this application is allowed.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
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