

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.37327 of 2014

Arising Out of PS.Case No. -802 Year- 2014 Thana -GOPALGANJ COMPLAINT CASE District-
GOPALGANJ

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Satyendra Singh @ Ghanshyam Singh Son of Late Hari Shankar Singh Resident of
Village- Haziapur, P.S. & District- Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar
2. Jitendra Singh Son of Late Hari Shankar Singh Resident of Village- Haziapur,
P.S. & District- Gopalganj.

.... Opposite Party/s

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Appearance:

For the Petitioner/s : Mr. Ranjeet Kumar Pandey, Advocate

For the Opposite Party/s : Mr. Dharmendra Kumar, Advocate

For the State : Mr. Rajendra Singh Shastri, APP

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 11-08-2017

The present case arises out of Complaint Case No. 802 of 2014 filed by the opposite party no. 2 against the petitioner (accused no. 1) and other accused persons. It has been alleged in the complaint petition that a land appertaining to Khata No. 137, Khesra No. 510, Rakwa-11.11 dhurs belongs to one Bishundeo Narayan Singh and Khata No. 22 belongs to one Raj Kumar Noniya. It is further stated in the complaint petition that a partition had taken place in the year 1977 in between the brothers of the father of the complainant. The complainant are said to be two brothers, namely, Jitendra Singh and Satyendra Singh (accused no. 1). It is further stated that Khesra No. 510 is in joint ownership with his uncle. It is also the case of the complainant that as far as Khata No. 137, Khesra No. 580 bearing



Rakwa 8.12 is concerned, the petitioner herein was given Khesra No. 580 in place of Khesra No. 510 after partition and thereafter the parties have been coming into peaceful possession of the said land. It is further alleged that accused nos. 7 and 8, namely, Shrikant Tiwary and Sheikh Ajimullah had got a registered sale deed dated 13.3.2014 prepared in conspiracy with the petitioner herein with the intention of grabbing the land.

In the aforesaid Complaint Case No. 802 of 2014 (Trial No. 1455 of 2014), the learned trial court by an order dated 06.8.2014 has been pleased to summon the accused persons for the offences punishable under sections 467, 468/34 of the Indian Penal Code.

The present petition has been preferred against the aforesaid order dated 06.8.2014 passed by the learned Chief Judicial Magistrate, Gopalganj.

The learned counsel for the petitioner has submitted that the instant case is purely civil in nature pertaining to land dispute, hence no case is made out for the offences punishable under the Indian Penal Code. It has been further submitted that there is no question of cheating in as much as neither any allegation nor any evidence with regard to forging of any document has been brought on record by the complainant much less allegation of committing any forgery for the purposes of cheating, hence no offence is made out under sections 420, 467 and 468/34 of the Indian Penal Code.



Per contra, the learned counsel for the opposite party no. 2 has submitted that neither there is any mala fide on the part of the complainant in filing the present case nor is it a case where no cognizable offence is made out upon bare perusal of the complaint petition, hence the summoning order requires no interference by this Court.

I have perused the materials on record and I find from perusal of the complaint petition that the entire allegation levelled in the present case is outrightly civil in nature and a land dispute, which has been given the colour of criminal offence to wreak vengeance against the petitioner herein. In this connection, it may be appropriate to quote the relevant paragraph of a judgment of the Hon'ble Apex Court reported in **2011(3) SCC (Criminal) 23:-**

“9. 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 succiently 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.”

It is clear from a bare perusal of the complaint petition that the allegations made therein, even if taken on their face value and accepted in their entirety do not prima facie constitute any offence and make out a case against the petitioner herein as well as the said allegations do not constitute cognizable offence, hence continuance of the connected criminal proceedings against the petitioner herein would be an abuse of the process of the Court. In this regard, reference is made to a judgment of the Hon’ble Apex Court reported in **1992 supplementary (1) SCC 335 (State of Haryana vs. Bhajan Lal)**.

It may not be out of place to mention here that any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution, should be deprecated and discouraged. The present case is glaring example of such cases wherein criminal prosecution has been resorted to only with mala fide intention and may be to extract an extra pond of flesh.

Yet another aspect of the matter is that the impugned order dated 06.8.2014 does not reflect any application of mind by the learned Chief Judicial Magistrate, Gopalganj and the same appears to



have been passed in casual and mechanical manner, though the repercussion of the said order is far reaching and a serious matter affecting one’s dignity, self respect and image in the society. Reference in this connection be made to a judgment of the Hon’ble Apex Court reported in **AIR 2015 SCW 3027 (Md. Mehmood Rehman vs. Khazir Mohammad Tunda & Ors.)**.

Having regard to the facts and circumstances of the case as well as for the reasons mentioned hereinabove, the order dated 06.8.2016 passed in Complaint Case No. 802 of 2014 (Trial No. 1455 of 2014), by the learned Chief Judicial Magistrate, Gopalganj, is hereby set aside and all the proceedings emanating therefrom are also quashed.

The petition is allowed. However, there shall be no order as to costs.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	N.A.F.R.
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