IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.49781 of 2013

Arising Out of COMPLAINT CASE No. -90 Year- 2010 Thana -GAYA District- GAYA

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Arvind Kumar S/O Late Indal Singh, resident of Village- Dharkaul, P.S- Piprahi, District- Shivhar and A S.D.O. Bihar State Bridge Nigam, Gaya.

.... Petitioner

Versus

1. The State Of Bihar
2. Gholam Hasnain Khan S/O Kalimul Rahman Khan, resident of Village- Belwar Basoora, P.S- Kothi, District- Gaya.

.... Opposite Parties.

with

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Criminal Miscellaneous No. 47948 of 2013

Arising Out of COMPLAINT CASE No. -90 Year- 2010 Thana -GAYA District- GAYA

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Ajay Kumar son of Late Harihar Choudhary, resident of 202, Vasundhra Palace, Ashiyana Road, Ramnagari More, P.S. Rajeev Nagar, P.O. Ashiyana Nagar, District - Patna

.... Petitioner

Versus

1. The State Of Bihar
2. Gholam Hasnain Khan Son of Kalimul Rahman Khan, resident of Village - Belwar Basoora, P.S. Kothi, District - Gaya

.... Opposite Parties.

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Appearance :
(In both these cases)

For the Petitioner/s	:	Mr. Krishna Murari, Sr. Advocate Mr. Suraj Narayan Yadav, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
For Opposite Party No. 2	:	Mr. Nand Kishore Prasad Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

CAV JUDGMENT

Date: 05-09-2017

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Heard learned counsel for the petitioners, learned counsel for the complainant and learned Additional Public Prosecutor for the State.

2. These two petitions under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') have been filed by the petitioners for setting aside the order dated 17.06.2011 passed by the learned Sub-divisional Judicial Magistrate, Sherghati, Gaya in Complaint Case No. 90 (C) of 2010 whereby finding a *prima facie* case for the offences punishable under Sections 147, 427, 323 and 504 of the Indian Penal Code, the respective petitioners have been summoned to face trial.

3. The complainant Gholam Hashain Khan has stated in the complaint that he himself and Sahina Khatoon are legal owners of Cadastral Survey Plot Nos. 430, 434, 435, 436 and 466 situated at village-Jamuna, P.S.-Imamganj, District-Gaya from which new plot nos. 541, 542, 543 and 603 respectively have been carved out. Earlier, the aforesaid plots were owned and possessed by one Paigambar Band Bibi and, in the revisional survey operation, the aforesaid plots were recorded in her name, who is his grand mother as well as grandmother of Sahina Khatoon. During Chakbandi operation, the aforesaid plots, except plot no. 541 were recorded in the name of his mother Mujtaba Bandi Bibi and Sahina Khatoon

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and regarding plot nos. 541 and 603, the matter is pending before the Joint Director, Chakbandi, Gaya. He had constructed six shop rooms along with *verandah* and a store room on the aforesaid land roofed with asbestos sheets and had fitted doors there and, out of the said six shops, he had let out one shop to one Munni Bibi, wife of Md. Nezam Mian.

4. It is further stated that a bridge was to be constructed over river Sorhar between village- Jamuna and Duonal and the site of the bridge was very close to his land. It is stated that during construction work of the said bridge, the accused Naujeet Singh Kalsi had approached him showing his identity as a contractor. He requested him to give two shops on rent to which he agreed. He was inducted as a tenant of two shops on monthly rental of Rs.2500/-.

5. It is further stated that on 15.03.2009, his younger brother informed him that the accused Naujeet Singh Kalsi, his *munshi* and other persons, being staffs of the said contractor, are destroying the crops standing on plot nos. 543, 542 and 541. A *sanha,* in this regard, was instituted in Imamganj Police Station. It is stated that after lodging *sanha*, the accused Naujeet Singh Kalsi approached him and accepted his fault and promised to compensate the damage done to the standing crops by paying Rs.20,000/-. It is

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stated that the accused Naujeet Singh Kalsi instead of paying the amount of damage, proceeded ahead with illegal acts at the spot. It is stated that on 23.07.2009, when he visited the site, he was surprised to see the damage done to his land due to lifting of soil by tractors. When he brought the same to the notice of the said contractor and his *munshi*, they confessed their fault and promised to compensate him for the damage done to his land. The matter was also brought to the notice of the Superintendent of Police, Gaya, who also assured to take action in the matter. Thereafter, on 05.10.2009, his younger brother Ghulam Saqlain Khan informed him about further illegal acts of the contractor Naujeet Singh Kalsi, who had started filling a portion of the plot nos. 542 and 543 for constructing a link road. It is further stated that after getting said information, he rushed to the spot. He was shocked to see the further illegal acts of Naujeet Singh Kalsi and his staffs. When he inquired into the matter, he came to know that filling work was being done for constructing link road to connect the said bridge to the main road adjacent south of plot no. 543. When he asked him to stop the said illegal work, the contractor being in collusion with the junior engineer Arvind Kumar and local police refused to stop work and threatened him with dire consequences.

6. It is further stated by the complainant that under such

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compelling circumstances, he filed Title Suit No. 446 of 2009 in the court of Sub-Judge, 1st Gaya to restrain the State and its authorities including the contractor and his *munshi* from making any construction as well as from changing the physical feature of the suit land.

7. Lastly, it is stated by the complainant in the complaint that on 17.02.2010, at about 6 a.m., he got an information that the accused persons had assembled at the spot and were causing damage to the shops at the site. He went there and saw illegal acts of the accused persons. He requested them not to go ahead with such illegal acts, but they heard nothing and continued with illegal acts and abused the complainant. The Executive Engineer slapped him. They removed sewing machine and clothes and other articles from the shop of Munni Begaum and ran away after loading them on a truck. It is stated that due to illegal act of the accused persons, he was put to a financial loss of Rs. one lac.. They also caused loss of Rs. fifty thousand to Munni Begum. It is alleged that though the complainant approached the local police, no action was taken by them.

8. The complainant was examined on solemn affirmation. In course of inquiry conducted under Section 202 of the Cr.P.C., besides the complainant, statements of five witnesses, namely,

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Doman Paswan, Madan Singh, Munni, Rasiq Minhaz and Gulam Saqlain Khan were recorded, whereafter, vide order dated 17.06.2011, all the five named accused persons named in the complaint including the petitioners were summoned to face trial for the offence punishable under Sections 147, 427, 323 and 504 of the Indian Penal Code.

9. It is submitted by Mr. Krishna Murari, learned Senior Counsel appearing for the petitioners in these cases that at the relevant point of time, the petitioner Ajay Kumar (Cr. Misc. No. 47948 of 2013) was Senior Project Engineer, Works Division, Gaya under Bihar Rajya Pul Nirman Nigam Ltd. He had been posted as such, vide office order no. 191 dated 03.08.2009 and had taken charge on his post on 10.08.2009. Similarly, the petitioner Arvind Kumar (Cr. Misc. No. 49781 of 2013) was posted as an Assistant Engineer, Works Division, Gaya under Bihar Rajya Pul Nirman Nigam Ltd. He has submitted that since the petitioners are public servants not removable from their office save or with the sanction of the Government and the offence alleged is said to have been committed by them while acting in discharge of official duty, the learned Sub-divisional Judicial Magistrate ought not to have taken cognizance against them without previous sanction of the State Government. He has submitted that the allegations made in

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the complaint are inherently improbable and the criminal proceeding so far as the petitioners are concerned, has been instituted with an ulterior motive for wreaking vengeance and with a view to spite them due to private and personal grudge. He has submitted that the witnesses examined in course of inquiry have not supported the allegations made in the complaint. He has submitted that for the construction of High Level R.C.C. Bridge over River Sorhar in Yamuna- Malhari Village Road, an agreement was executed on 25.11.2008 between the Bihar Rajya Pul Nirman Nigam Ltd. and the contractor M/S Kalsi Buildcon Private Ltd. and, vide letter dated 25.11.2008, the work order was issued, according to which, the work was to commence on 26.11.2008 and the time for completion of the work was 15 months. Since the work was completed well before the date of completion, the bridge was inaugurated in January, 2010 itself. He has submitted that the link road connected to the bridge had been constructed over Government land and not upon the complainant's land. He has submitted that the complainant has already filed Title Suit No. 446 of 2009 in the court of Sub-Judge, 1st Gaya and when he failed to get any order in his favour in the said suit brought for restraining the State authorities from making any construction as well as from changing physical feature of the suit land as well as decree for

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mandatory injunction with a direction to remove the illegal articles laid down on portion of the suit land as well as for decree of damage, the instant complaint case has been filed with oblique motive.

10. On the other hand, Mr. Nand Kishore Prasad, learned counsel appearing for opposite party no. 2 has refuted the aforesaid submissions made by learned Senior Counsel for the petitioners by arguing that the accused persons including the petitioners in conspiracy with each other had committed the alleged offence. He has submitted that the agreement to construct bridge over river Sorhar with the contractor would not confer any right upon them to damage standing crops of the complainant or to cause damage to the physical feature of his land and shop. He has submitted that accused persons constructed a link road over plot nos. 542 and 543 to approach the bridge without any information to the complainant and, in the aforesaid process, they damaged the standing paddy and other crops of the complainant and when the dispute was taken before the petitioners, they not only abused the complainant, but also manhandled him which fact has been supported by the witnesses examined on behalf of the complainant in course of inquiry under Section 202 of the Cr.P.C. He has submitted that the question of obtaining sanction under Section 197 of the Cr.P.C.

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does not arise in the present case, as the accused persons are charged for rioting, voluntarily causing hurt, mischief causing loss to property and intentional insult with intent to provoke the breach of peace.

11. Having heard learned counsel for the parties and on careful consideration of the materials on record, this Court finds merit in the submissions of learned counsel for the petitioners.

12. It stands admitted by the complainant that for construction of High Level R.C.C. Bridge over river Sorhar in Yamuna- Malhari Village Road in District Gaya, an agreement was executed between Bihar Rajya Pul Nirman Nigam Ltd and the contractor M/S Kalsi Buildcon Private Ltd. It is also not disputed that vide letter No. 1370 dated 25.11.2008, as contained in Annexure-2 to these applications issued under the signature of the Senior Project Engineer, Bihar Rajya Pul Nirman Nigam Ltd., the work order was issued in favour of M/s Kalsi Buildcon Private Ltd. It also stands admitted that at the relevant time the petitioner Ajay Kumar being Executive Engineer was the Senior Project Engineer of the Project whereas the petitioner Arvind Kumar was an Assistant Engineer and, they were directly associated with the execution of High Level R.C.C. Bridge over river Sorhar in Yamuna- Malhari Village Road.

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13. It is stated in the complaint itself that prior to filing of the complaint, the complainant had filed Title Suit No. 446 of 2009 in the court of Sub-Judge, 1st Gaya to restrain the State authorities including the accused Naujeet Singh Kalsi from construction of the link road to connect the bridge in question. The petitioners have argued that the said suit is for restraining the State authorities from making any construction as well as from changing the physical feature of the suit land as also for mandatory injunction with a direction to the defendants to remove the illegal articles laid down on the portion of the suit land as well as for decree of damage.

14. The contention of the petitioners that no order in favour of the complainant was passed in Title Suit No. 446 of 2009, has also not been disputed by the complainant.

15. The petitioners have primarily raised two questions in the present applications for setting aside the order of cognizance, namely, (a) order of cognizance in absence of prior sanction of the competent authority to prosecute the petitioners under Section 197 Cr.P.C. is bad in law, and (b) the complaint filed by the complainant/ opposite party no. 2 is motivated and afterthought after getting no relief in civil litigation.

16. Learned counsel for complainant has argued that Section 197 of the Cr.P.C. would not be applicable on the facts and in the

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circumstances of the case as the offences alleged are for rioting, voluntarily causing hurt, mischief causing loss to property and intentional insult with intent to provoke the breach of peace.

17. Section 197 of the Cr.P.C. so far as it is relevant in the present case is reproduced hereinbelow:-

> "**197. Prosecution of Judges and public servants** –(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction—
>
> (a) xx xx xx
>
> (b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government."

18. A cursory look at the aforesaid provision makes it clear that if any offence is alleged to have been committed by a public servant, who is employed in connection with the affairs of the State and, who cannot be removed from the office except by or

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with the sanction of the State Government, the court is precluded from taking cognizance of such offence except with the previous sanction of the State Government. Such sanction, however, would be necessary, if the offence alleged against public servant is committed by him while acting or purporting to act in discharge of his official duties. There is no dispute to the fact that at the time of commission of the alleged offence, the petitioners being Gazetted Officers were employed in connection with the affairs of the State and could not have been removed from the office except by or with the sanction of the State Government.

19. The question remains as to whether the acts complained of in the present case were directly concerned with the official duties of the two public servants. As far as the offences of rioting, voluntarily causing hurt, mischief causing loss to property and intentional insult with intent to provoke the breach of peace are concerned, they cannot be treated as acts in discharge of official duties.

20. However, on a deeper scrutiny into the circumstances under which the complaint came to be filed would demonstrate that the allegations of rioting, voluntarily causing hurt, mischief causing loss to property and intentional insult with intent to provoke the breach of peace are clearly an afterthought and it becomes more

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than apparent that the complainant has chosen to level such allegations with sole motive to give a shape of criminality to the entire dispute, which was otherwise civil in nature.

21. So far as the construction of bridge and link road are concerned, they were integrally connected and inseparably interlinked with the offence alleged. Those acts were certainly in discharge of the official duties of the petitioners. Hence, for the offences alleged, the court was precluded from taking cognizance of the offences against the petitioners except with the previous sanction of the competent authority.

22. So far as the second question for consideration in the present case is concerned, as noticed hereinabove, the complainant had, in fact, initially filed Title Suit No. 446 of 2009 in the court of Sub-Judge, 1st Gaya for restraining the State authorities from making any construction as well as from changing physical feature of the suit land as also for mandatory injunction with a direction to remove the illegal articles laid down on portion of the suit land as well as for decree of damage.

23. The aforesated suit was filed in 2009 and it would appear from the statement of the complainant on solemn affirmation that the construction of work of the bridge was completed on 28.1.2010. It would further be apparent from his

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statement that on 17.2.2010, he got information that his shop was damaged and articles were thrown and when he went to the place of occurrence and asked for rent, he was abused, manhandled and slapped. Surprisingly, the complaint was filed in the court after eight days on 26.02.2010. Moreover, the complainant did not name the person, who slapped him. Even, the five witnesses examined in course of inquiry conducted under Section 202 of the Cr.P.C., namely, Doman Paswan, Madan Singh, Munni, Rasiq Minhaz and Gulam Saqlain Khan failed to name the person, who slapped the complainant.

24. Having regard to the facts stated hereinabove, I have no doubt in my mind that when the complainant failed to get any relief in the civil proceedings, he has filed a coloured complaint which is motivated and afterthought. It is, thus, clear that the action of the complainant in filing the criminal complaint is not *bona fide* and amounts to misuse and abuse of the process of law.

25. In ***State of Haryana and Ors. vs. Ch. Bhajan Lal and Ors. [(1992) Supp (1). SCC 335]***, the Supreme Court has laid down the principles on which the High Court can quash the criminal proceedings under Section 482 of the Cr.P.C. They read as under :-

> "(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

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entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(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.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal

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proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(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."

26. The principle nos. 6 and 7 are clearly applicable in the present case.

27. In view of the discussions made above, the impugned order dated 17.06.2011 passed by the learned Sub-divisional Judicial Magistrate, Sherghati, Gaya in Complaint Case No. 90 (C) of 2010 so far as the petitioners are concerned is set aside.

28. The applications are allowed.

(Ashwani Kumar Singh, J.)

Kanchan/-

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