

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.32029 of 2013

Arising Out of PS.Case No. -592 Year- 2009 Thana -PATNA COMPLAINT CASE District- PATNA

Deo Raj Thakur Son Of Late Chhedi Thakur Resident Of Mohalla - Sultanpur,
P.S. - Danapur, Distt. – Patna Petitioner.

Versus

1. The State Of Bihar
2. Vijay Kumar Singh Son of Late Murari Pd. Singh Head Master Govt. Vani
Mandit Madhya Vidyalaya Patel Nagar (Rajbanshi Nagar)Patna.
...Opposite Parties.

with

Criminal Miscellaneous No. 15345 of 2011

Arising Out of PS.Case No. -592 Year- 2009 Thana -PATNA COMPLAINT CASE District- PATNA

Madheshwar Sharma, Son of Late Ram Naresh Singh, R/o Village-Mahajpura,
P.S.-Bikram, District-Patna, at present resident of Nohanpur Punaichak P.S.-
Shastrinagar, District-Patna. Petitioner.

Versus

1. The State of Bihar.
2. Vijay Kumar Singh Son of Late Murari Pd. Singh Head Master Govt. Vani
Mandit Madhya Vidyalaya Patel Nagar (Rajbanshi Nagar)Patna.
.... Opposite Parties.

Appearance :

(In Cr.Misc. No.32029 of 2013)

For the Petitioner/s : Mr. Shiv Shankar Prasad Singh, Adv.
For the Opposite Party : Mr. Sachidanand Chaudhary, Adv.
For the State : Mr Shyam Kumar Singh, A.P.P. 138.

(In Cr.Misc. No.15345 of 2011)

For the Petitioner/s : Mr. Shiv Shankar Prasad Singh, Adv.
For the Opposite Party : Mr. Sachidanand Chaudhary, Adv.
For the State : Mr Shyam Kumar Singh, A.P.P. 138.

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 12-09-2017

Heard both sides.

2. Petitioner (Deo Raj Thakur) in
Cr.Misc.No.32029/2013 and petitioner (Madheshwar Sharma)
in Cr.Misc.No. 15345/2011, are accused in Complaint Case
No. 592 (C)/2009 brought by opposite party No.2, Vijay



Kumar Singh.

3. By the impugned order dated 19.08.2010, the learned Judicial Magistrate 1st Class, Patna has found a prima facie case against the petitioners and other named accused persons for offences under Sections 147,447,506,427 and 379 of the Indian Penal Code and has ordered for issuance of process against the petitioners and others to face trial.

4. The aforesaid order has been challenged on the ground that in fact the matter is of pure civil dispute and just to take revenge, false and concocted criminal case has been lodged. Hence, continuance of criminal proceeding would cause miscarriage of justice as the same apparently suffers from malafide of opposite party No.2.

5. To consider the rival contentions of the parties, the background of complaint case and the facts relating to the complaint case, it would be necessary to look into the following facts of the case.

6. Plot No.1220 under Khata No.769 total Ara 7.78 acres is recorded in the cadastral survey khatian as Gair Majarua Aam vide Annexure-A to the counter affidavit. The case of the petitioners is that the ex-landlord had settled the aforesaid land to different tenants and different person



purchased different portion of the land of the said plot through different sale deeds, years back from the different settlee tenants. One Harendra Kumar had purchased 1.25 acres of land in Plot No.1220 from Khayalu Rai and others through registered sale deed in the year 1963 vide Annexure-2 to Cr.Misc.No.32029/2013. Harendra Kumar was recorded in the government records. The aforesaid information was supplied to the petitioners under Right to Information Act vide Annexure-13 to the supplementary affidavit. Petitioner (Deo Raj Thakur) is holder of power of attorney from aforesaid Harendra Kumar as per the statement on oath in paragraph-11 to Cr.Misc.No.32029/2013. Petitioner (Madheshwar Sharma) claims to have purchased a portion of the said plot from another tenant Godhini Devi vide registered sale deed dated 19.04.1985 at Annexure-12. The Register-II was in the name of Godhini Devi vide Annexure-12/1.

7. In the aforesaid background, the complaint case aforesaid was filed without disclosing the identity of the land and alleging that on 01.03.2009 the complainant-opposite party no.2 who was Principal of Govt. Vani Mandir Middle School, Patel Nagar, Patna, ceremony of foundation laying of the school building was going on. At the same time, all the named accused persons and identified forming



unlawful assembly came at the place and started ransacking the material placed there, they fired from their respective firearms and committed theft of cash. In the counter affidavit for the first time, the opposite party No.2 disclosed the Plot Number etc. of the land on which the foundation laying ceremony was going on, which was in fact Plot No. 1220, which was already purchased by the petitioner or the executant of the power of attorney of the petitioner. The record reveals that several round of litigation before the executive authority as well as up to this Court for the same land was there. The record further reveals that considering the nature of dispute , the Collector, Patna wrote a letter to the Circle Officer, Patna Sadar to stop the construction work of the school building on the disputed land and to seek advice from the government advocates to file appeal or civil suit in respect of the dispute vide his letter dated 26.02.2008 at Annexure-5. The same order was passed by the successor-District Magistrate on 24.04.2008 vide Annexure-6 prior to filing of the complaint case.

8. Submission of the learned counsel for the petitioners is that the background of the aforesaid nature of dispute would clearly indicate that there was reason for the petitioners to protect their possession on the land of which



they were rightful owners by virtue of purchase long back from the rightful owners. Therefore, it cannot be said or argued that the petitioners had no reason to go on the land on 01.03.2009. Moreover, the complainant deliberately suppressed the identity of the land to keep in dark the real dispute between the parties. The contention is that the complainant had filed Title Suit No.23/2013 Vijay Kumar Singh Vs. The State of Bihar & Ors for the same property which was allowed to be dismissed for default. Therefore, criminal prosecution for pure civil dispute is an abuse of the process of the Court.

9. To counter the aforesaid submission, the learned counsel for the opposite party No.2 has drawn attention of the Court to the counter affidavit filed in the case and submits that the Plot No.1220 aforesaid was allotted for construction of two schools including the school of the petitioners besides other lands allotted to other schools vide Annexure-B in the year 1996 itself by the concerned Govt. Authority. Thereafter the complainant came in possession and temporary school was running thereat but no one appeared to protest the possession of the complainant. It further submits that there is apparent allegation of commission of trespass and other offences by the petitioners.



Therefore, only for the reason that there is civil dispute, the criminal prosecution cannot be quashed.

10. After hearing the parties I find on the basis of material available on the record that the petitioners had bonafide claim on the referred land on the date of institution of the complaint petition. Hence, it cannot be said that the petitioners had no reason to go on the land on which opposite party No.2 was going to make construction though opposite party No.2 may also have some claim on the land on the basis of settlement from the government subsequent to the purchase by the petitioners. Moreover order of the Collector, Patna prohibiting any construction on the land was already there which the complainant suppressed.

11. In the aforesaid circumstances, allowing the criminal prosecution of the petitioners would amount to an abuse of the process of the Court, which cannot be allowed. Hence the impugned order and entire criminal prosecution hereby stands quashed.

12. Both the quashing applications are allowed.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	14.09.2017
Transmission Date	14.09.2017

