

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.314 of 2015

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1. Sakaldeep Yadav @ Turai Gope. Son of Late Sadhu Gope. Resident of Village - Manihari, Police Station - Manihari, District - Katihar.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Ram Sharan Singh.
3. Shiv Raman Singh. Both sons of Bali Mandal. Resident of Village - Haswar, Police Station - Manihari, District - Katihar.
4. Nakul Yadav. Son of Late Chhedi Yadav.
5. Shankar Yadav.
6. Kamaldeo Yadav. O.P. No. 5 & 6 are sons of Hardeo Yadav. O.P. No. 4 to 6 are resident of Village - Manihari, Police Station - Manihari, District - Katihar.
7. Tinku Kumar Singh. Son of Ram Sharan Singh. Resident of Village - Haswar, Police Station - Manihari, District - Katihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bimal Kumar

For the Respondent/s : Mr. Amitesh Kumar(App)

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

2 16-01-2018 The petitioner, who is the complainant of C.A. No. 366 of 2013, has challenged the order dated 30.06.2014 passed by the learned Sessions Judge, Katihar in Cr. Rev. No. 47 of 2014, whereby the order of cognizance dated 10.12.2013 passed by the learned Judicial Magistrate 1st Class, Katihar, in the aforesaid complaint, has been set aside.

A complaint was lodged by the petitioner alleging that during his bachelorhood, his elder brother, viz. Hardev Gope died and the entire property came in possession of the petitioner



and his mother. The property which was inherited was given to the exclusive possession of the mother of the petitioner. But since in her old age, the mother started residing with the complainant, the entire property, including the land in question, came in possession of the petitioner/complainant and he had been coming in exclusive possession of the said land since 1980. It was further alleged that accused nos. 5 and 6, viz. Shankar Yadav and Kamaldev Yadav, who are sons of another person by the same name, viz. Hardev Yadav, falsely presented themselves before the officers in mutation camp as sons of Hardev Gope and entered into agreement with the son of Sadhu Gope and the land in question was mutated in their favour. It has further been alleged that the aforesaid act was in conspiracy with accused no. 4, viz. Mahesh Prasad Singh, who at the relevant time was the Circle Officer as well as one Manohar Singh, retd. D.I.G. It has also been alleged by the petitioner that on the advice of co-accused, Mahesh Prasad Singh, the land in question was conveyed to Saroj Singh and Poonam Devi, who are related to the accused Ram Sharan Singh. A false genealogical table also was prepared at the instance of and in collaboration with the other accused persons.

In the aforesaid complaint, the petitioner has admitted that after the mutation, a civil suit vide Title Suit No. 26



of 2009 was filed against the opposite parties, which is still pending before the competent court of law. The cause of approaching the court for filing the complaint was that on the day of occurrence, the petitioner/complainant was assaulted, abused and was threatened of dire consequences and was also divested of Rs. 3,500/-, which he was carrying in person.

On the basis of the aforesaid complaint and on going through the deposition of the witnesses, the learned Magistrate vide order dated 10.12.2013 took cognizance against the opposite parties under Sections 420, 465 and 149 of the Indian Penal Code.

However, from the endorsement on the side of the order-sheet, it appears that later, in English language, it has been written by the learned Magistrate that there are sufficient materials to proceed further under Sections 147, 323, 420, 465 and 149 of the Indian Penal Code against all the accused persons except accused no. 4, viz. Mahesh Prasad Singh.

Against the aforesaid order of cognizance, the opposite parties preferred revision before the learned Sessions Judge, Katihar vide Cr. Rev. No. 47 of 2014. The Revisional Court after taking into account the pendency of the Title Suit No. 26 of 2009 and rejection of an injunction petition preferred by the petitioner, restraining the accused persons/opposite parties, set



aside the order of cognizance on the ground of the dispute being of civil nature.

Mr. Vimal Kumar, learned Advocate for the petitioner, assailing the impugned order has submitted that the learned Revisional Court, in the first instance, did not take into account that the cognizance was also taken under Sections 147, 323 of the Indian Penal Code, apart from Sections 420, 465 and 149 of the Indian Penal Code and has chosen to set aside the order with respect to the offences under Sections 420, 465 and 149 of the Indian Penal Code only.

If the aforesaid order is allowed to stand on record, it has been argued, then also the offences under Sections 147 and 323 Indian Penal Code would be deemed to be continued as against the opposite parties.

The other ground of challenge by the learned counsel for the petitioner is that the revision petition was filed only under Section 397 of the Cr.P.C. which is not the correct forum and the petition should have been under Sections 399 and 401 of the Cr.P.C.

Perused the records.

The mere fact that a Title Suit has been filed by the petitioner before a competent court of law on the same set of facts,



it is clearly established that this is a case of civil dispute. That apart, it is only the civil court in an appropriate proceeding which will decide whether the genealogical table, which is alleged to have been prepared by the accused persons/opposite parties, is genuine or not.

After going through the basic set of facts, the petition for injunction, restraining the opposite parties from the land in question, filed by the petitioner, was rejected by the civil court.

The Revisional court, it has been argued, perhaps, only had a look at the order dated 10.12.2013, which has been recorded in the right hand column of the order-sheet and the further endorsement of the learned Magistrate on the right hand side appears to have escaped the attention of the Revisional court.

Be that as it may, from the records, it appears that because of the civil dispute, the present case has been lodged. From the complaint itself, it would appear that an attempt has been made by the petitioner to anyhow bring the case within the ambit of criminal prosecution which ought not to be permitted.

I do not find any folly in the order impugned and consequently, I do not find any occasion to interfere with the order impugned.



As such, the present petition is dismissed.

(Ashutosh Kumar, J.)

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