

# IN THE HIGH COURT OF JUDICATURE AT PATNA

## Criminal Miscellaneous No.40239 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- BHABHUA (KAIMUR)

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1. Mahtma Vyasand @ Shambhunath Pathak, son of Krishna Dev Pathak, resident of Brahma Vidyalaya and Ashram, Chotka Rajpur, P.S.-Simri, District- Buxar, Bihar,
  2. Mahtma Ved Prakashanand @ Arvind Kumar Mishra, Chela of Swami Satyanand, resident of Brahma Vidyalaya and Ashram, Chotka Rajpur, P.S.- Simri, District- Buxar, Bihar, presently residing at village-Nandana, P.S.- Chainpur, District-Kaimur, Bihar.
  3. Mahtma Satyasevanand, Chela of Swami Satyanand, resident of Brahma Vidyalaya and Ashram, Chotka Rajpur, P.S.-Simri, District- Buxar, Bihar, presently residing at village-Nandana, P.S.-Chainpur, District-Kaimur, Bihar,
  4. Mahtma Shivpramodanand, Chela of Swami Satyanand, resident of Brahma Vidyalaya and Ashram, Chotka Rajpur, P.S.-Simri, District- Buxar, Bihar,
  5. Kamla Pd. Singh, son of Ramniwas Singh,
  6. Anish Singh, son of Ramashankar Singh,
  7. Manoj Singh, son of Ramashankar Singh, all three being residents of Village- Sirsi, P.S.-Chainpur, District-Kaimur, Bihar,
  8. Ramji Singh, son of late Babban Singh,
  9. Lal Singh @ Lal Bahadur Singh, son of late Sajjan Singh, both resident of village- Harsev, P.S.-Chand, District- Kaimur.

.... .... Petitioner/s

Versus

1. The State of Bihar
2. Kripa Narayan Singh, son of late Prabhu Narayan Singh, resident of Nandana, P.S.-Chainpur, District-Kaimur.

.... .... Opposite Party/s

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### Appearance :

For the Petitioner/s : Mr. Kamal Kishore Singh, Advocate

For the Opposite Party No.1: Mr. Indra Kumar Singh, APP

For the Opposite Party No.2: Mr. Tribhuwan Narayan, Advocate

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**CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA**

CAV JUDGMENT

**Date: 06-02-2018**

This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 16.03.2011 passed by the Chief Judicial Magistrate, Bhabhua, Kaimur, in Chainpur P.S. Case No.82 of 2010, by which learned



Magistrate has taken cognizance against the petitioners for the offence under Section(s) 504, 427, 341, 379/34 Indian Penal Code.

2. Case of the prosecution, as stated in the Complaint Petition No.867 of 2010, which was forwarded by the learned Chief Judicial Magistrate, Bhabhua, Kaimur, to the Police Station under Section 156(3) Cr. P. C., is that the land, as mentioned in the Complaint Petition, is the ancestral *khatiyani* property of the Complainant and the said lands are in possession of the Complainant-Informant. The Complainant-Informant had given contract of erecting boundary wall around the said land to one Ramnath Ram of village-Sariyan. The Complainant got the bricks, sand, cement etc. dropped at the site in the evening of 01.07.2010. The contractor, Ramnath Ram, and the labourers started work of the boundary wall on 02.07.2010 from 6.00 AM itself by digging the foundation and part of the wall had also been built. In the meanwhile, Chainpur Police came to the place of occurrence and informed the Complainant-Informant that accused nos.1 and 2, Vyasanand and Ved Prakashanand, respectively, have submitted application before him that litigation is going on with regard to the land and the Complainant-Informant be asked to stop the work. The police directed the Complainant-Informant to stop the work and come to Police Station with papers of the land. The Complainant-



Informant went to his house and brought papers of the land and told labourers not to resume the work till his return from the Police Station. It is alleged that suddenly three Jeeps arrived and stopped on the western front side of the land and all the named accused persons named in the Complaint Petition approached the Complainant-Informant with common intention and conspiracy. Petitioner Nos.1 and 2 abused the Complainant-Informant and also slapped him. They took pistol from the waist and putting the same on his chest threatened to kill the Complainant-Informant if he will come on the land. It is also alleged that petitioner no.2 forcibly took out rupees twenty thousand from the pocket of the Complainant-Informant, which he had kept for paying to the labourers. It is further alleged that immediately thereafter 7-8 tractors with trolleys came on the land and petitioner nos.1 and 2 under threat of pistol forced the labourers of the Complainant-Informant to load the bricks, cement and sand etc. on the tractors and the same were sent towards Hata Bazar. The materials were worth rupees one lac. Thereafter, all the accused persons demolished the boundary wall constructed by the labourers and left the place of occurrence abusing the Complainant-Informant. The Complainant-Informant went to Chainpur Police Station with all the documents concerning with the land and informed about the entire incident and also showed him the



documents relating to his land. The police assured to look into the matter, but asked the Complainant-Informant to stop the work. The Complainant-Informant stopped the work. Later on, the Complainant-Informant learnt that on 03.07.2010 in the evening a false case has been registered against him.

3. Counsel for the petitioners has submitted that instant case has been filed as a counter blast to Chainpur P.S. Case No.77 of 2010 lodged against the Complainant-Informant and other persons vide Annexure-2. The police investigated Chainpur P.S. Case No.77 of 2010. Charge-sheet has already been submitted against the accused Badamu Chauhan of that case on 10.10.2010 under Section(s) 147, 148, 149, 342, 323, 380, 120-B, 472, 452 Indian Penal Code. Later on, charge-sheet has also been submitted in that case against the Complainant-Informant, Shyamu Chauhan, and one Lallu Yadav on 25.02.2011. Copy of the charge-sheet has been annexed as Annexure-3. Counsel for the petitioners has further submitted that Civil Suit is pending between the parties for the property in dispute.

4. Counsel for the petitioners has submitted that after investigation of Chainpur P.S. Case No.82 of 2010 (instant case), police submitted Final Form on 31.08.2010 finding the same to be false and untrue, merely counter blast to Chainpur P.S. Case No.77



of 2010. Copy of the Final Form has been annexed as Annexure-4. Thereafter, Complainant-Informant filed Protest Petition, which was registered in the Court of the Chief Judicial Magistrate, Bhabhua, as Complaint Case No.13 of 2011. The learned Magistrate on the basis of the allegation made in the Protest Petition, which was registered as Complaint Case No.13 of 2011, has found *prima facie* case against these petitioners by the impugned order. Learned Magistrate has passed the impugned order in mechanical manner without application of mind.

5. Learned counsel for the Opposite Party No.2 and the learned APP have appeared.

6. Learned counsel for the Opposite Party No.2 submits that enmity cuts both ways. There is specific allegation in the instant case against the petitioners of taking away the materials worth rupees one lac from the site and also demolishing boundary wall constructed by the labourers of the Complainant-Informant. It is also alleged that accused persons took out pistol from their waist and by pointing the same on the chest of the Complainant-Informant threatened to kill him, if he will come on the land and also forcibly took rupees twenty thousand from the pocket of the Complainant-Informant, which was kept by him for making payment to the labourers.



7. Learned APP has submitted that there is no illegality in the impugned order.

8. From the impugned order, it appears that the learned Magistrate after perusing the Solemn Affirmation of the Complainant-Informant and statement of four witnesses recorded during enquiry has found *prima facie* case against the petitioners for the offence under Section(s) 504, 427, 341, 379/34 Indian Penal Code.

9. Counsel for the petitioners has pointed out various documents (Annexure- 7, 8, 9, 10,11, 12) and submitted that entire claim of the Complainant-Informant that the lands, in question, were in his possession from the time of his ancestor is absolutely false. Instant case has been instituted against the petitioners and other accused persons only as a counter blast to the case instituted against the Complainant vide Chainpur P.S. Case No.77 of 2010 to harass the petitioners and other accused persons and to put pressure on them to withdraw the case. Entire complaint is malicious in nature and is abuse of process of law.

10. This Court is of the view that the Court below is not required to see the defence of the accused at the time of holding enquiry under Section 202 Cr. P.C. The Court below is only required to see *prima facie* case during enquiry on the basis of the



Solemn Affirmation of the Complainant, statement of the witnesses recorded during enquiry and the allegations made in the Complaint Petition.

**11.** The purpose of vesting inherent power under Section 482 Cr. P. C. to the High Court is to prevent abuse of the process of any Court and also to ensure delivery of justice. It is an extraordinary exceptional power vested in the Hon'ble Court, which is to be exercised very sparingly and at that stage prospective defence of the accused cannot be looked into.

**12.** The Hon'ble Supreme Court in the case of *M/s Indian Oil Corporation Vs. NEPC India Ltd.* reported in **2006 AIR SCW 3830** has held that where facts constituted both civil and criminal liabilities, criminal proceedings could not be terminated by virtue of Section 482 of the Code of Criminal Procedure by considering the prospective defence.

**13.** In the instant case, from perusal of the allegation in Complaint Petition as well as various documents filed by the petitioners (Annexure- 7 to 12), this Court finds that there are series of litigation between the parties for the property in dispute. Chainpur P.S. Case No.77 of 2010 has been filed against the Complainant and others on the basis of the written report filed by the petitioner no.3 for the offence alleged to have been committed



on 02.07.2010. Enmity cuts both ways.

**14.** In the instant case, there is specific allegation against all these petitioners of committing overt act as mentioned, in detail, in the Complaint Petition, which has been supported during enquiry by the Complainant in Solemn Affirmation as well as by the witnesses during enquiry. Learned Magistrate is required to see only *prima facie* case at the time of holding enquiry.

**15.** Therefore, this Court does not find any illegality in the impugned order.

**16.** The application is, accordingly, dismissed.

**17.** The petitioners are given liberty to raise all the points as raised in this petition at the stage of framing of Charge, which shall be considered and disposed off by the learned Court below in accordance with law without being prejudiced by this order.

**(Sanjay Priya, J)**

***J.Alam/-***

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