

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.24529 of 2013

Arising Out of PS.Case No. -172 Year- 2011 Thana -SAHARSA COMPLAINT CASE District-
SAHARSA

- =====
1. Nageshwar Jha, son of Janardan Jha,
 2. Santosh Kumar Murari, son of Nageshwar Jha,
 3. Shankar Jha @ Manoj Kumar Jha, son of Nageshwar Jha,
 4. Kanhaiya Jha, son of Nageshwar Jha,
 5. Pinki Devi, wife of Santosh Kumar Murari, all resident of village- Bijwar, P.S.-
Mahishi, District- Saharsa

.... Petitioner/s

Versus

1. The State of Bihar
2. Manoj Kumar Jha, son of Radha Kant Jha, resident of village- Chainpur, P.S.-
Bangaon, District- Saharsa

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Pramod Mishra, Advocate

For the Opposite Party/s : Mr. Anuj Kumar Srivastava, APP

Mr. Prafull Chandra Thakur, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 30-01-2018

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 23.01.2013 passed by the Chief Judicial Magistrate, Saharsa, in Complaint Case No.172-C of 2011 by which the learned Magistrate after holding enquiry has found *prima facie* case against the petitioners for the offence under Section(s) 147, 323, 341, 379, 504, 506/34 Indian Penal Code.

2. As per Complaint Petition, Complainant has a piece of land in Saharsa as mentioned in the Complaint Petition and the petitioners have contacted the Complainant for purchasing the



same. The land was finally sold in favour of petitioner no.5. It is alleged that petitioner no.1 put bricks over the land to make construction. Petitioner no.1 went to the house of the Complainant after 1½ month of the execution of sale deed and made demand of rupees two lac from the Complainant to make payment of *Rangdari* to Yadav people to which Complainant refused. They also misbehaved with Complainant and gave threat. It is further alleged that while the Complainant was returning by cycle from Saharsa, the petitioners surrounded him and assaulted him with fists and slaps and got his signature over the blank paper.

3. Counsel for the petitioners has submitted that correct fact is that there was talk between petitioner no.1 and the Complainant with regard to purchase of a piece of land as mentioned in the Complaint Petition. Petitioner no.1 believing the words of the Complainant had paid rupees ten lac to him, but sale deed was not executed by the Complainant and others on one pretext or other. The petitioners later on came to know that the land, which was to be sold in favour of the petitioners, was already sold earlier by the Complainant and he has cheated the petitioners and committed forgery with them.

4. The petitioner no.1 with the aforesaid allegation filed Complaint Case No.69-C of 2011 in the Court of the Chief Judicial Magistrate, Saharsa, which was forwarded to the police



under Section(s) 156(3) Cr. P.C. and the police registered Saharsa Sadar P.S. Case No.238 of 2011 and after investigation of the case submitted charge-sheet against the Complainant of the instant case vide Annexure-2 to this petition for the offence under Section(s) 406, 420, 467, 468, 120-B Indian Penal Code on 29.12.2011. Instant case is counter blast of Saharsa Sadar P.S. Case No.238 of 2011 and the same has been filed by the Complainant to save his skin from the aforesaid case. Instant case is malicious prosecution filed by the Complainant.

5. The Complainant-Opposite Party No.2 has appeared and filed Counter Affidavit. Opposite Party No.2 has stated in the Counter Affidavit that, in fact, sale deed was executed in favour of petitioner no.5 by the Complainant on 04.11.2010 and the aforesaid land has been mutated in the name of petitioner no.5, which is evident from order dated 09.11.2010 of the Circle Officer, Saharsa, Sadar, annexed as Annexure-A to the Counter Affidavit.

6. From perusal of Annexure-2, it is apparent that earlier to this case, petitioner no.1 had filed Complaint Case bearing no.69-C of 2012, which was sent to the P.S. under Section 156(3) Cr. P. C., whereupon, Saharsa Sadar P.S. Case No.238 of 2011 was registered and the police after investigation submitted charge-sheet against the Complainant for the offence under Section(s) 406, 420, 467, 468, 120-B Indian Penal Code.



7. Complainant-Opposite Party No.2 has filed Counter Affidavit, wherein, in para 3 it has been submitted that sale deed has been executed on 04.11.2010 in favour of petitioner no.5 for the aforesaid land and the same has been mutated in her favour by order dated 09.11.2010 passed by the Circle Officer, Saharsa, Sadar. As such, from the aforesaid statement made in the Counter Affidavit by the Opposite Party No.2, it appears that there is land dispute between the parties.

8. It is alleged in Complaint Case No.69-C of 2011 that earlier petitioner no.1 had paid rupees ten lac to the Complainant for purchase of land as there was talk between Complainant and the petitioners for sale of land and, ultimately, the Complainant sold the said land in favour of petitioner no.5 by executing sale deed, but later on it was found that the aforesaid land was already sold by the Complainant to other persons and in this way the Complainant has cheated and committed forgery with the petitioners for which petitioner no.1 had filed Complaint Case No.69-C of 2011 against the Complainant before the learned Court below which was forwarded to the P.S. under Section 156 (3) Cr. P.C. and the police after registering the case vide Saharsa Sadar P.S. Case No.238 of 2011 submitted charge-sheet after investigation against the Complainant of the instant case for the offence under Section(s) 406, 420, 467, 468, 120-B Indian Penal Code on 29.12.2011.



9. The instant case is counter blast of the aforesaid case filed by the petitioner no.1 against the Complainant. Therefore, instant complaint has been filed by the Complainant maliciously against the petitioners with intention to harass them as a counter blast of Saharsa Sadar P.S. Case No.238 of 2011, filed by the petitioner no.1 against the Complainant and others in which charge-sheet has already been submitted by the police.

10. In view of such, impugned order dated 23.01.2013 passed by the Chief Judicial Magistrate, Saharsa, in Complaint Case No.172-C of 2011 along with entire criminal proceeding against the petitioners is hereby quashed.

11. This application is, accordingly, **allowed**.

12. Let the lower court records be returned to the Court below forthwith.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	28-11-2017
Uploading Date	08-02-2018
Transmission Date	08-02-2018

