

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.14053 of 2012

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1. JAGDISH YADAV, S/O LATE ANUP LAL YADAV RESIDENT OF VILLAGE- RAGHUNATHPUR UTTAR, P.S.- BHARGAMA, DISTRICT- ARARIA.
 2. MITHILESH KUMAR BHARTI, S/O JAGDISH YADAV RESIDENT OF VILLAGE- RAGHUNATHPUR UTTAR, P.S.- BHARGAMA, DISTRICT- ARARIA.
 3. KISHORE KUMAR YADAV S/O LATE RESHAM LAL YADAV RESIDENT OF VILLAGE- RAGHUNATHPUR UTTAR, P.S.- BHARGAMA, DISTRICT- ARARIA.
 4. AKHILESH KUMAR YADAV S/O LATE BIJENDRA YADAV RESIDENT OF VILLAGE- DINAPATTI, P.S.- MURLIGANJ, DISTRICT- MADHEPURA.
 5. SANDHYA DEVI W/O LATE AWADHESH KUMAR TADAV RESIDENT OF VILLAGE- DINAPATTI, P.S.- MURLIGANJ, DISTRICT- MADHEPURA.
 6. ABHISHEK KUMAR YADAV S/O LATE AWADHESH KUMAR YADAV RESIDENT OF VILLAGE- DINAPATTI, P.S.- MURLIGANJ, DISTRICT- MADHEPURA.
 7. MITHILESH KUMAR YADAV S/O LATE BIJENDRA YADAV RESIDENT OF VILLAGE- DINAPATTI, P.S.- MURLIGANJ, DISTRICT- MADHEPURA.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. HARI NANDAN YADAV S/O LATE UTTIM LAL YADAV RESIDENT OF VILLAGE- RAGHUNATHPUR DAKSHIN (SOUTH), P.S.- BHARGAMA, DISTRICT- ARARIA.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Durgesh Nandan
For the State	:	Mr. Surendra Kumar (APP)

CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
C.A.V. JUDGMENT

Date : 11-04-2018

Heard learned counsel for the petitioners and learned
counsel for the State.



Petitioners, by means of this application under section 482 of the Code of Criminal Procedure, have invoked the inherent jurisdiction of this Court with prayer to quash the order dated 29.10.2010, passed by the learned Judicial Magistrate, 1st Class, Araria in connection with Complaint Case No. 1507(c) of 2010, whereby and whereunder cognizance has been taken against the petitioners for the offence under sections 420 and 468 of the Indian Penal Code.

The prosecution case, *in short*, is that the complainant purchased a piece of land by two different registered sale deeds from one Chet Narayan Yadav by five other persons. From the date of purchase of the said land, they are coming in peaceful cultivating possession and trees have also been planted there. Prior to the alleged occurrence, the accused persons were cutting the trees. Thereafter, the complainant reached at the said plot and saw that the labourers of the petitioners no. 1 to 3 were cutting the trees and on protest, they threatened to dire consequences. The petitioners disclosed that they had purchased the land and now, they are the owner of the said land. Thereafter, the complainant and others came to know that the land has been



sold through the fictitious transaction without any payment with a view to grab the lands of the complainant.

Learned counsel appearing on behalf of the petitioners submits that no offence against the petitioners is disclosed and the present prosecution has been initiated with *mala fide* intention for the purposes of harassment. On perusal of Annexure-3, it appears that petitioner no. 4 and one Awadhesh Kumar Yadav had purchased a piece of land from the said Chet Narayan Yadav through a registered sale deed. Further petitioner no. 1 had purchased the land in question from petitioners no. 4 and 6 through a registered sale deeds and paying the rent, as detailed in Annexure nos. 4, 4/1 and 5. He is cultivating and in physical possession over the same. Similar is the case of petitioner no. 2. He had also purchased the land in question for valuable consideration through four sale deeds, as contained in Annexure-6 series. Learned counsel further contends that after purchase of the alleged land, the names of the petitioners have been mutated and since then they are in peaceful possession, for which Anchal Adhikari has issued a Land Possession Certificate (Annexure-7). It is also submitted that petitioner no. 3, being the own cousin brother



of the complainant, had also purchased the land through registered sale deed from Akhilesh Kumar Yadav, brother of Awdhesh Kumar Yadav and since then his heirs are coming in peaceful possession and cultivating possession over the same, as detailed in Annexure-8 to the application. The complainant has no title over the land in question. Therefore, learned counsel prays for quashing the order taking cognizance.

Considering the materials available on record and the facts of the case, this Court finds substance in the submissions advanced on behalf of the petitioners and agrees with the same. The present complaint case has been filed after purchase of the land by the petitioners, which in terms of the judgment rendered by the Hon'ble Supreme Court in the case of *State of Haryana Vs. Bhajan Lal*, reported in *1992 Supp. (1) SCC 335* is a malicious prosecution. Relevant extract of paragraph 102 of the aforesaid judgment is quoted hereinbelow for ready reference :

“In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles



of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formula and to give an exhaustive list of myriad kinds of cases wherein such power should be exercise:

(1).....(6).....

(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.”***

In view of the discussions made above, the order taking cognizance dated 29.10.2010, passed by the learned Judicial Magistrate, 1st Class, Araria in connection with Complaint Case No. 1507 (c) of 2010, is not sustainable in the eye of law. Therefore, it is, hereby, quashed.

Accordingly, the application stands allowed.

(Arvind Srivastava, J)

Shailendra/-

AFR/NAFR	NAFR
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