

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.53261 of 2013

Arising Out of PS.Case No. -143 Year- 2011 Thana -SAHARSA COMPLAINT CASE District-
SAHARSA

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Madan Mohan Mishra Son Of Late Surendra Mishra Resident Of Village-
Bhagwanpur, P.S.-Khajuri, Simri Bhakhtiyarpur (Balwa Hat), District-Saharsa.

.... Petitioner

Versus

1. The State Of Bihar
2. Santosh Yadav Son Of Brahmdeo Yadav Resident Of Village-Dholi Chainpur,
P.S.-Bangaon, District-Saharsa At Present Kahra, Ward No.-6, P.S. & District-
Saharsa. Opposite Parties

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Appearance :

For the Petitioner : Mr. Rajeev Roy, Advocate

For the Opposite Parties : Mr. Rajesh Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date: 16-05-2018

Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State.

2. The instant application has been filed for quashing order dated 10.9.2012, passed by Sri Mukesh Kumar, Judicial Magistrate, 1st class, Saharsa in Complaint case no. 143(c) of 2011, whereby and whereunder the learned court has taken cognizance of the offence under sections 427 and 506 read with section 34 of the Indian Penal Code. The petitioner is accused no.1 in the said case.

3. Learned counsel for the petitioner has drawn attention of the Court towards order dated 16.1.2012, passed by the Land Reforms Deputy Collector, Saharsa in Case no. 29 of 2011, whereby and whereunder the petitioner's claim as *raiyyat* over the land in question has been established and that under the said order he is entitled to



possession of the land in question. He submits that the complainant, his brother and others have also filed a title suit against the petitioner bearing Title Suit No. 122 of 2012 seeking declaration of title over the land in question. He submits that the issue is predominantly civil in nature and only to cause harassment to the petitioner, the complainant has resorted to lodging of the criminal complaint. He submits that the complainant has abused the process of the court on extraneous consideration since the petitioner's right in respect of the land in question, has been established. In support of the contention, he has relied upon decisions in the case of **(2007) 12 Supreme Court Cases 1 (Inder Mohan Goswami and another Vs. State of Uttaranchal and others); 2017 SCC Online Pat 1704 (Manju Rani Singh Vs. The State of Bihar and another; 2017 SCC Online Pat 714 (Ramesh Prasad @ Ramesh Prasad Sah Vs. The State of Bihar and another and 2017 SCC Online SC 800 (Kartik Chandra Majee @ Kartik Chand Majes & others Vs. State of Jharkhand & another).**

4. On going through the complaint, it is observed that the specific allegations have been made against the instant petitioner of attempting to forcibly evict the complainant from the land and ransacking his house. It is also alleged in the complaint that co-accused who had come along with the petitioner also resorted to the firing from their country made pistol. It is alleged that in the process



they have also taken away many household articles.

5. The complaint is essentially in respect of the aforesaid acts. Merely, because civil proceedings are existing between the parties in relation to the right, title and possession over some land, any criminal prosecution initiated by the complainant cannot be thrown out at the threshold by presuming that the same is based on extraneous consideration or that the same is an abuse of the process of the court.

6. Since the complainant has prima facie made out a case and ingredients of the offence under which cognizance has been taken are found to be present, the order taking cognizance, cannot be faulted.

7. There is no occasion for this Court to exercise jurisdiction under section 482 of the Code of Criminal Procedure and the application, being devoid of merit, is dismissed.

(Madhuresh Prasad, J)

Shashi.

AFR/NAFR	NAFR
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