

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.21752 of 2015**

Arising Out of PS. Case No.-756 Year-2014 Thana- KHAGARIA COMPALINT CASE
District- Khagaria

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| <div style="display: flex; flex-direction: column; gap: 5px;"><div>1. Jai Prakash Mandal and Ors. Son of Late Saudagar Mandal</div><div>2. Chama Lal Mandal Son of Late Newa Lal Mandal</div><div>3. Balmiki Mandal Son of Late Ayodhya Mandal All Resident of Naw Tolla,
P.S. Pasraha, District - Khagaria</div></div> | <div>... .. Petitioner/s</div> <div>Versus</div> <div style="display: flex; flex-direction: column; gap: 5px;"><div>1. State of Bihar</div><div>2. Ravindra Mandal Son of Hiya Lal Mandal Resident of village - Malpur, P.S.
Rupauli, District - Purnea, Mob. No. 9973274582</div></div> <div>... .. Opposite Party/s</div> |
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Appearance :

For the Petitioner/s :	Mr.Mrityunjay Kumar
For the Opposite Party/s :	Mr.J.Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
CAV ORDER

6 20.12.2019 This application has been filed for quashing the order dated 8.1.2015 passed by Sri Ravi Ranjan, Judicial Magistrate, 1st Class, Khagaria, in connection with Complaint Case No. 756C of 2014 whereby and whereunder learned Magistrate after inquiry under Section 202 Cr.P.C. finding a prima facie case under Sections 420, 468 and 120B IPC has ordered for issuance of process.

Case, in short, is that a complaint has been filed by the complainant stating that he is also heir with respect to Batwaranama of his great grandfather leaving behind three daughters and 18 Bigha 11 Katha 19 dhurs of land situated in Mouz Bandehra in the names of his three Nanas and petitioners



under conspiracy prepared a Batwaranama leaving the name of daughters of his Nanas and further on Batwaranama took forged signature of his Nani Lat Kamoda Devi by which it appears that Late Kumoda Devi sold her share of land under Mouza Kolwara, Bandehra and Bharra. It is also stated that signatures of Mukhiya, Sarpanch and Panch over the said Batwaranama are forged and on that basis mutation has been created in the name of accused persons in collusion with the Karamchari and Circle Officer.

After inquiry and finding the prima facie case learned Magistrate has issued processes against the petitioners, against which the present application for quashing has been filed.

Submission of learned counsel for the petitioners is that petitioners made application before Circle Officer for mutation in their names the land was inspected by Karamchari and Circle Inspector and thereafter their names were ordered to be mutated. The complainant having full knowledge about the same he has relied upon the order of Circle Officer before D.C.L.R. being Mutation Case No. 6 of 2010-11 and Mutation Case No. 7 of 2010-11 and both the appeals were heard by learned D.C.L.R., Gogri and both the appeals were dismissed by judgment dated 13.12.2010, against which the complainant has



preferred Mutation Revision Case No. 10 of 2010-11 before Collector, Khagaria and the same is pending. Further case of the petitioners is that during the pendency of those mutation cases the complainant has sold some of the land to others for which a complaint case being 1345C of 2012 was brought by the petitioners' side and thereafter in order to harass the petitioners the present complaint case has been filed. Submission of learned counsel for the petitioners is that it is out and out a malicious and vexatious proceeding in order to wrake vengeance and settle the score with the petitioners and if it is allowed to continue, it is glaring example of abuse of process of the court. Further submission is that in mutation appeal filed by the complainant order was passed in the year 2010 and thereafter complainant case has been filed by petitioner No.2 in 2012 and thereafter the present complaint case has filed in the year 2014. Above facts show that complainant has knowledge of mutation of the land in the name of petitioners prior to 10 years but the present complaint has been filed after four years, that too, after filing of complaint case by the petitioner, that also disclosed that it is malicious and vexatious proceeding, which cannot be allowed to continue.

In this case, it appears that opposite party No.2 has



filed a counter affidavit but none appears on his behalf to argue the case and from the counter affidavit and the complaint petition it appears that petitioner No.2 got the land mutated in his name in the year 2010 though it is alleged that the same on the basis of forged Batwaranama and on the basis of forged signatures of Mukhiya, Sarpanch and Panch.

Having heard both sides, on perusal of materials available on the record, it appears that the dispute is with respect to getting the name mutated in the names of the petitioners which has already been decided by Revenue Court and the appeals filed by opposite party No.2 were dismissed and the matter was pending before the revisional court. It further appears from the materials available on the record that earlier a complaint case has been lodged against the complainant by petitioner No.2 making allegation of selling their land to another person in spite of land being mutated in their names. In support of his case, petitioners brought copy of order passed by D.C.L.R. and complaint case on the record. Those facts are not even mentioned in the complaint petition filed by the complainant. All the above documents are public documents which can be looked into by this Court in order to see that the complainant is not coming with clean hand, rather coming with



coloured version.

This Court is aware of the settled principle that criminal proceeding and civil proceeding are two different proceedings and criminal proceeding cannot be quashed on the ground that civil proceeding is pending or the same has been decided in favour of the accused persons, once perusal of the materials available on the record makes out an offence. Above settled principle of law has also been discussed in the judgment of Hon'ble Apex Court in the case of **Kishan Singh vs. Gurpal Singh : AIR 2010 SC 3624** wherein a suit was decided in favour of accused persons on the basis of which, sale deed was executed and a point was involved as to whether criminal proceeding can be quashed by the High Court relying upon finding of the civil court in respect of the same subject matter. After considering several decisions of Hon'ble Apex Court in paragraph-19 of the said judgment Hon'ble Apex Court has held as follows :

“ 19. Thus, in view of the above, the law on the issue stands crystallized to the effect that the findings of fact recorded by the Civil Court do not have any bearing so far as the criminal case is concerned and vice-versa. Standard of proof is different in civil and criminal cases. In civil cases it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. There is neither any statutory nor any



legal principle that findings recorded by the court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject-matter and both the cases have to be decided on the basis of the evidence adduced therein. However, there may be cases where the provisions of Sections 41 to 43 of the Indian Evidence Act, 1872, dealing with the relevance of previous Judgments in subsequent cases may be taken into consideration.”

Hon’ble Apex Court in paragraphs-20, 21 & 22 of the said judgment has also considered the point of unexplained inordinate delay in lodging criminal case, which are as follows :

“20. In view of the above, the Judgment and order of the High Court dated 13.2.2009 is not sustainable in the eye of law and is liable to be set aside. However, the facts and circumstances of the case do not warrant so. The agreement to sell in favour of the appellants’ father is dated 22.10.1988 and sale deed was to be executed and registered by 15.06.1989. The respondent Nos. 1 to 4 filed Civil suit No. 60/1989 in 1989. It is difficult to believe that the appellants’ father was not aware of the pendency of that suit. No explanation has been furnished as to why after expiry of the date of execution of the sale deed in favour of Kishan Singh, i.e., 15.06.1989, the appellants’ father did not file the suit for specific performance which was subsequently filed on 6.2.1996 as Civil Suit No. 81/1996. Even if it is presumed that Kishan Singh was not aware of pendency of suit filed by the respondent Nos. 1 to 4, no explanation could be furnished that in case, the appellants’ father filed another Suit No.



1075/1996 for setting aside the decree dated 8.5.1996 in Civil Suit No. 60/1989, why did he wait till the decision of that suit for lodging FIR, as the civil and criminal proceedings could have proceeded simultaneously. The FIR has been filed only on 23.07.2002, i.e., after filing the RFA No. 2488/2002 before the High Court on 15.07.2002. Therefore, there is an inordinate delay on the part of the appellants' father in filing the FIR and there is no explanation whatsoever for the same.

21. Prompt and early reporting of the occurrence by the informant with all its vivid details gives an assurance regarding truth of its version. In case, there is some delay in filing the FIR, the complainant must give explanation for the same. Undoubtedly, delay in lodging the FIR does not make the complainant's case improbable when such delay is properly explained. However, deliberate delay in lodging the complaint is always fatal.

22. In cases where there is a delay in lodging a FIR, the Court has to look for a plausible explanation for such delay. In absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an afterthought or had given a coloured version of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the Civil Court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is



lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case.”

Ultimately Hon’ble Apex Court has held in paragraph-24 of the said judgment as follows :

“24. It is to be noted that the appellants’ father Kishan Singh lodged FIR No. 144/02 on 23.7.2002 through his attorney Jaswant Singh Mann under Sections 420/323/467/468/471/120B, IPC, against the respondents. The allegations made in the FIR were substantially similar to the allegations made by the appellants in Civil Suit No. 1075/96, which had been decided against them. It is evident that the aforesaid FIR was filed with inordinate delay and there has been no plausible explanation for the same. The appellants lodged the aforesaid FIR only after meeting their Waterloo in the Civil Court. Thus, it is evident that the FIR was lodged with the sole intention of harassing the respondents and enmeshing them in long and arduous criminal proceedings. We are of the view that such an action on the part of the appellants’ father would not be bona fide, and the criminal proceedings initiated by him against the respondent amount to an abuse of the process of law.”

In the present case also, as discussed above, the complainant was in full knowledge of the land being mutated by the petitioners in their names on the basis of Batwaranama, which was claimed to be forged by opposite party No.2, who



also moved before the revenue court against the mutation order in appeal that was dismissed, thereafter opposite party No.2 filed revision application against that order. All the facts have been suppressed by opposite party No.2 in complaint petition. It further appears that a complaint case has been lodged by petitioner No.2 against the complainant for selling the land which has been mutated in his name in the year 2012 and thereafter admittedly after four years of the knowledge of the same to the opposite party No.2 the present case has been lodged after losing the battles before the revenue court and no plausible explanation has been given for lodging the complaint by the complainant though he has claimed that on the basis of the forged Batwaranama petitioners got the land mutated. It is well settled that the power under Section 482 Cr.P.C. has to be exercised only in exceptional cases and only sparingly but at the same time the court has to be vigilant that no criminal proceeding be allowed to continue just to harass the persons. For that Legislator has inserted Section 482 in the Criminal Procedure Code. Furthermore, the opposite party No.2 is also not coming with clean hand and giving a coloured version of the case in order to wreak vengeance on the other party.

In view of the discussions made above and relying



upon the judgment of Hon'ble Apex Court, as stated above,
present case is a fit case in which the inherent power of the
court can be exercised.

Accordingly, this application is allowed. The
impugned order dated 8.1.2015 is quashed.

(Vinod Kumar Sinha, J)

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