

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1518 of 2017

Arising Out of PS. Case No.-269 Year-2015 Thana- RAJIVNAGAR District- Patna

Madan Prasad son of Late Ram Prasad, resident of Chandra Vihar Colony,
Ashiana Digha Road, Police Station- Rajeev Nagar in the town and district of
Patna.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Ranjit Kumar Singh, Adv.
For the State : Mr. Parmeshwar Mehta, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

5 04-04-2019 Heard learned counsel for the petitioner as well as learned
A.P.P.

2. The land mafia offenders got engaged themselves in grabbing the land belonging to Bihar State Housing Board, Digha and for that, so many cases have been drawn up. This case happens to be one of them.

3. There happens to be an allegation at the end of the informant, Executive Engineer of the Housing Board dated 26.09.2015 alleging inter-alia that during course of inspection having found the persons engaged in erecting boundary wall covering area three thousand Sq.feet of the land belonging to the Housing Board. On query, they came to know that the construction work was being taken up by the Madan Prasad and his companions.

4. After registration of Rajeev Nagar P.S. Case no.269/2015, investigation has been taken up and, concluding the same, charge sheet has been submitted whereupon vide order dated



28.06.2016 petitioner has been summoned to face trial for an offence punishable under Sections 447, 419, 420, 467, 468 and 471 of the IPC and Section 3 of Public Property Defacement Act.

5. It has been submitted at the end of the learned counsel for the petitioner that by way of supplementary affidavit, the petitioner has categorically stated that petitioner has got no concern with the aforesaid land. It has also been submitted that Housing Board who failed to take possession nor could get possession after acquisition remained under slumber for years together, got up began to file case only to complete paraphernalia without properly identifying presence of accused over the land irrespective of the fact that of illegal possession to some extent has been legalized by way of promulgation of Digha Acquired Land Settlement Act, 2008.

6. Apart from this, also referred paras of the case diary in order to cast asperation against the prosecution as, none had seen the petitioner over the land and in likewise manner, the so-called witnesses that means to say para-2 further statement of the informant, para-3 another employee of the Bihar State Housing Board have clearly stated that on query from the persons got the name of the petitioner but from whom, neither they disclosed nor the I.O. succeeded during course of investigation that means to say even in worst case, accepting that there was encroachment over the acquired land, the prosecution failed to substantiate the culpability of the petitioner therewith.



7. The learned APP opposed the prayer and submitted that at the present moment only prima-facie case has to be seen and that has been.

8. Now it is settled at rest that at the stage of taking of cognizance under Section 190 of the Cr.P.C., the cognizance taking court has to see only the prima-facie case. Simultaneously, while exercising the power under Section 482 of the Cr.P.C., there happens to be expansion of spectrum of adjudication and for that, in **State of Hariyana & Ors. Versus Bhajan Lal & Ors** reported in **1992 Supp(1) SCC 335**, the following criteries have been identified as laid down under para-102:

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, on investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient grounds for proceedings against the



accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceedings is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide 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.”

9. After having cursory perusal of the material, it is evident that though name of the petitioner is found but in vagueness that means to say, none of the witnesses have claimed to have seen the petitioner at the spot rather, they came to know from the surroundings without having proper identification.

10. Consequent thereupon, the order impugned is set aside. Petition is allowed.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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