

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.3370 of 2017

Arising Out of PS. Case No.-1220 Year-2015 Thana- NAWANAGAR District- Buxar

Pintu Choubey Son of Baban Choubey resident of Village P.S. Nawanagar,
District- Buxar.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Maharajo Devi Wife of Bishwanath Kumar Resident of Village- Waina, P.S.-
Nawanagar, District- Buxar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Manoj Kumar Singh, Adv.

For the Opposite Party/s : Mr.Sunil Kumar Pandey, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 04-04-2019 Heard learned counsel for the petitioner as well as
learned APP.

Petitioner is aggrieved by an order dated 09.05.2016
passed by A.C.J.M.,Vth, Buxar in Complaint Case
No.1220(C)/2015 whereby and whereunder petitioner along
with others has been summoned to face trial for an offence
punishable under Section 341, 342, 384/34 of the IPC.

Contention on behalf of the petitioner is that the
whole prosecution happens to be malafide. Furthermore, it has
also been submitted that the dispute is in between Mukhiya and
Up-mukhiya and, the Up-mukhiya succeeded in maneuvering
the complainant through which about a year after the alleged
occurrence Complaint Petition No. 104(c)/2014 got filed, which



was sent to the local police whereupon Nawanagar P.S. Case No.117 of 2014 was registered, the case was properly investigated and then, final report was filed. However, on the basis of the protest cum complaint petition the matter proceeded and by the order impugned petitioner along with others has been summoned. During course of police investigation the matter has thoroughly been investigated more particularly in the background of Annexure-2 and further the dispute in between Mukhiya and Up-mukhiya. Apart from this, it has also been submitted that during course of an inquiry only interested, partisan witnesses have been examined.

The learned APP opposed the same.

**In Prabhu Dutt Tiwari Vs. State of Uttar Pradesh
& Ors. reported in (2018) 13 SCC 609, it has been held:**

“2. The respondents challenged the order, extracted above, in a criminal writ petition before the High Court. The consideration of the High Court reads as follows :-

"9. I have given my anxious judicial thoughts over the entire facts and circumstances of the case. Considering the fact that the bhumidhari right of Mahima Tiwari has never been challenged in the criminal complaint or in the evidence led in support of the allegations made therein and there is no allegation or evidence on record that the sale property was ancestral property or the complainant had any right by birth therein, Mahima Tiwari (accused no.5) was fully entitled to transfer his land in favour of Pushpa Devi and if he has executed the sale deed in question in her favour, neither he nor Pushpa Devi nor any other person can be held liable for criminal offence punishable under Sections 419, 420, 468, 471, 120-B of I.P.C. The court of learned Magistrate and learned revisional court are not



supposed to shut their eyes to the transferable right of a Bhumidhar. They are not bound in all the circumstances to take it for granted that if the oral evidence under Sections 200 and 202 Cr.P.C. has been led in support of the allegations made in the criminal complaint, their hands are fettered upto the extent that except issuing the process under Section 204 Cr.P.C. they would not pass any other order including the order of dismissal of the criminal complaint, if at all it appears to the Magistrate that accused have not committed any criminal offence. If there is any grievance to the complainant he is well within his right to agitate the matter before the civil court in a suit for cancellation of the sale deed. The criminal jurisdiction of the court cannot be invoked to settle the dispute purely of civil nature."

3. At the stage of summoning the accused on the basis of a private complaint all that is required is a satisfaction by the Magistrate that there is sufficient ground to proceed against the accused in the light of the records made available and the evidence adduced by the complainant.

4. Having gone through the order passed by the Magistrate, it is fairly clear that there has been the required satisfaction. The discussion by the High Court would give an indication that the Magistrate had to appreciate the evidence and then enter a finding as to whether the accused are guilty or not. At the stage of summoning, as already stated above, the satisfaction required for the Magistrate is only to see whether there is sufficient ground to proceed against the accused."

From the order impugned, it is evident that there happens to be no ambiguity consequent thereupon, petition lacks merit and is dismissed.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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