

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.2662 of 2017

Arising Out of PS. Case No.-154 Year-2016 Thana- LAURIA District- West Champaran

1. Shudhanshu Shankar
2. Amritanshu Shankar,
Both sons of Om Narayan Singh.
3. Om Narayan Singh, Son of Late Ramjee Singh.
All residents of Village- Ujjain Tola, behind Head Office, State Bank, P.S.
Bettiah, District- West Champaran.

... .. Petitioner/s

Versus

1. The State Of Bihar.
2. Ajay Kumar Singh, Son of Shri Shailendra Singh, resident of Village- Ujjain
Tola, Behind Head Office, State Bank, P.S. and District- Bettiah.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Dhananjay Kumar, Adv.
For the O.P. No.2	:	Mr. Shiv Kumar Dwivedy, Adv.
For the State	:	Mr. Akhileshwar Dayal, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 26-04-2019 Heard learned counsel for the petitioners as well as learned APP along with learned counsel for the informant (whose presence has been during course of dictating order).

2. Initially, the prayer has been for quashing of the FIR relating to Lauria P.S. Case no.154/2016 however, during pendency of instant petition police report (charge sheet) has been filed after completing investigation, followed with summoning of petitioners whereupon, the order of cognizance dated 26.05.2017 has also been put under challenge by way of I.A. No.2091/2017. So, virtually the order of cognizance is now



under challenge.

3. The learned counsel for the petitioners has made elaborate submission whereunder, it has been argued that both the parties that means to say petitioners as well as O.P. No.2 are cousin brothers and on account of land dispute, so many litigations are going on and one of the same happens to be Title Suit No.95/2015, which is pending before Munsif, Narkatiyaganj (Annexure-2). It has further been submitted that with regard to the aforesaid lands falling under Title Suit the O.P. No.2 (informant) has got no right title. Mutation stands in the name of petitioners. It has also been submitted that O.P. No.2 (informant) got a collusive police report. The petitioners have exposed the activity of the police officials in connivance of the O.P. No.2 by way of filing different petitions before the concerned.

4. In the aforesaid background, it has been submitted that when the written report is properly scrutinized, it speaks about violation of the injunction order and for that, there happens to be specific provision under the CPC so prescribed under Order XXXIX Rule-2A. That being so, the court concerned happens to be the competent forum to be approached, which could take proper legal recourse for violation of the



injunction order. So, it has been submitted that an individual is forbidden to institute a case with regard to violation of the injunction order. As such, the instant prosecution along with the order of cognizance is bad.

5. It has also been submitted that in the written report though there happens to be bifurcation of activity of the petitioners along with others identifying two independent incident, the first one dated 13.08.2016 and the second one dated 06.09.2016 but, after going through the recitals of the written report, it is apparent that same happens to be in its continuity concerning violation of the injunction order relating to the same land bearing Khata No.17, Khesra No.1742 and so, the alleged second incident should also been in continuity thereof and that happens to be reason behind the fact that police has submitted its report (charge sheet) apart from other sections, under Section 188 of the IPC that means to say violation of an order of the public servant and so, in the background of presence of Order XXXIX Rule-2A of the CPC, the police was incompetent to submit its report concerning the same. Consequent thereupon, the same is fit to be set aside. Lastly, it has also been submitted that from perusal of the written report, it is evident that incident so alleged at the end of the prosecution



on 13.08.2016 as well as 06.09.2016 are not in isolation to each other rather, consequential to each other as a result thereof, inordinate delay in launching of prosecution is there without a cogent explanation. Accordingly, the order impugned should be set aside.

6. On the other hand, the learned APP opposed the prayer and submitted that at the present moment, only prima facie material has to be seen and from the order impugned, it is evident that same happens to be properly appreciated. Thus, needs no interference.

7. Gone through the record. From perusal of the written report, it is evident that the institution of the present case relates with an occurrence dated 06.09.2016 which is also found from the column-3 of the formal FIR apart from perusal of second part of written report. True it is that there happens to be reference of an incident dated 13.08.2016 on which date the accused persons so named therein armed variously in utter violation of the order of the injunction passed by the civil court gone over the land with tractor and ploughed the same. On protest having at the end of the informant as well as his brother, accused persons threatened of dire consequence over which, police was informed and there happens to be further disclosure



that police had found allegation true, but the same happens to be by way of reference exposing the previous activities of the petitioners and others with definite allegation that on 06.09.2016 at about 07:00 AM, the second part of written report speaks the accused persons so named with their henchmen indulged in preparation to plough the field by a tractor which was protested and on account thereof, they have threatened (so detailed). As reported, led institution at Lauria P.S. Case No.154/2016, investigated, followed with charge sheet as well as order of cognizance.

8. From minute analysis of the allegation, it is apparent that there happens to be no disclosure at the end of the prosecution that on 06.09.2016, the accused persons have gone over the land. The submission of the learned counsel that court should infer in accordance with Section 114 of the Evidence Act on that very score, is neither permissible while adjudicating upon the matter under Section 482 of the Cr.P.C. nor, the court thrust its opinion on that very score in the background of the fact that it happens to be duty of the prosecution to substantiate its case beyond all reasonable doubt and during course thereof, the accused will have an opportunity to cross-examine the witness.



9. In the background of proper appreciation of facts, and further, absence of activity relating to the land in question, with regard thereto order of injunction has been passed, certainly the order of cognizance under Section 188 of the Cr.P.C. would not survive coupled with the fact had there been, it would have been in accordance with as per requirement so laid down under Section 195 of the Cr.P.C. In likewise manner, there happens to be no allegation relating to extortion and on account thereof, no offence under Section 385 of the IPC is found substantiated. However, there happens to be presence of ingredients of other sections whereunder cognizance of an offence has been taken, which ultimately survive.

10. At the present moment, the learned counsel for the O.P. No.2 makes his appearance and placed C.C. of order dated 22.12.2017 passed by the learned Sessions Judge, West Champaran at Bettiah, which was filed by the petitioner, against the order of cognizance. After going through the same, it is found that the revision petition has been dismissed. On query the learned counsel for the petitioner kept mum. That means to say, event has purposely been withheld. That means to say, with ulterior motive, the same has not been brought up on record.

11. There happens to be intentional act at the end



of the petitioners in concealing the fact that order of cognizance has been challenged at the end of petitioner no.1, Shudhanshu Shankar bearing Cr. Revision No.193/2017 before the Sessions Judge, West Champaran at Bettiah and the same was dismissed vide order dated 22.12.2017. The I.A. No.2091/2017 has been filed on 22.09.2017 that means to say on the date of filing of the aforesaid I.A. the matter was already subjudice before the learned Sessions Judge and so, the prayer would not be entertainable before this Court. Fraud is an event which sterile the effect of any kind of order. Furthermore, unscrupulous litigant should not be allowed to snatch the order of the court by way of fraud. Moreover, the order of the Sessions Judge has not been challenged, hence met with finality. Apart from this, the order is yet to be signed. Consequent thereupon, the instant petition is found merit less and is dismissed.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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