

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.50024 of 2014

Arising Out of Complaint Case No.C-530 Year-2011 Thana- EAST CHAMPARAN
COMPLAINT District- East Champaran

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1. Baidyanath Sahni Son of Late Ramashish Sahni
 2. Dharikshan Sahni Son of Late Ramashish Sahni
 3. Sudama Chaudhary Son of Late Ramlal Chaudhary
 4. Chhotelal Prasad Son of Dev Nandan Mahto All are Residents of Village - Chintamanpur, P.S. - Pipra, District - East Champaran
 5. Devendra Bhagat Son of Deoki Bhagat
 6. Pappu Yadav Son of Babulal Yadav All are residents of Village - Kuawa, P.S. - Chakia, District - East Champaran

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ramanand Prasad Verma Son of Feku Prasad Verma Resident of Village - Chintamanpur, P.S. - Pipra, District - East Champaran

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Rajesh Ranjan, Advocate Mr. Atul Shankar, Advocate
For the O.P. No.2	:	Mr. Pradhan Murli Manohar Prasad, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, A.P.P.

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 13-03-2019

Heard learned counsel for the petitioners; learned
A.P.P for the State and learned counsel for the opposite party no.

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2. The petitioners have moved the Court under
Section 482 of the Code of Criminal Procedure, 1973
(hereinafter referred to as the ‘Code’) for the following relief:

*“That this is an application for
quashing the order dated 23/09/13 passed by*



the A.C.J.M., Motihari, in Tr. No. 1891/14 arising out of complaint case no. C-530/2011 whereby and where cognizance of offences u/s 420, 467, 468, 471 and 323 of the Indian Penal Code was taken and processes were issued against the petitioners.”

3. The allegation against the petitioners is that they had sold in pieces land belonging to the opposite party no. 2 pertaining to Khata No. 104, Khesra 1251. It has also been stated in the complaint that the said land was bought by the ancestors of the opposite party no. 2 under registered sale deed dated 11.12.1946. It has further been alleged that the petitioners had tried to forcibly take possession of the land and the opposite party no. 2 was abused and pushed.

4. Learned counsel for the petitioners submitted that the entire complaint case is based on misconception. It was submitted that the sale deed referred in the complaint pertains to Khesra No. 1291 and not 1251 and, thus, the opposite party no. 2 has no claim over the land with regard to which the allegation is of having transferred to various persons. Learned counsel drew the attention of the Court to copy of the sale deed dated 11.12.1946 in support of such contention. It was further submitted that once there is no material for the opposite party no. 2 to show as to how he was claiming ownership and title over Khesra No. 1251, the entire story in the complaint stands



demolished, inasmuch as, there was no occasion for the opposite party no. 2 to resist the petitioners as they had dealt with their land pertaining to Khesra No. 1251 on which the opposite party no. 2 had no right title or interest. It was further submitted that the addition of allegation of pushing and abusing is only for giving it some criminal colour. Learned counsel submitted that the issue is purely civil in nature and the opposite party no. 2 has to approach the Civil Court of competent jurisdiction with regard to any grievance which he may have regarding the petitioners having alienated the land belonging to him.

5. Learned A.P.P. fairly submitted that though cognizance may have been taken by the Court below but from the materials on record, it is evident that the issue is purely civil in nature.

6. Learned counsel for the opposite party no. 2 submitted that the land belonging to the opposite party no. 2 had been sold by the petitioners. However, on a direct query to him as to how he could take such stand when in the complaint case itself it was written that the opposite party no. 2 had got the land from his ancestors who had acquired it through sale deed dated 11.12.1946 in which Khesra No. 1251 is not mentioned, learned counsel could neither answer the query of the Court nor



controvert the fact that in the sale deed in favour of the ancestors of opposite party no. 2, Khesra No. 1251 was not included and rather it was Khesra No. 1291.

7. Having considered the facts and circumstances of the case and submissions of the learned counsel for the parties, the Court finds that a case for interference has been made out.

8. The issue relates to a purely civil dispute. If the opposite party no. 2 feels that his land has been wrongly sold by the petitioners, such wrong sale of land can also be subject matter of criminal proceeding provided there is proof that the said land belongs to the opposite party no. 2. In the present case, the opposite party no. 2 himself claims that the land belongs to him on the basis of registered sale deed in favour of his ancestors dated 11.12.1946. Perusal of the same, copy of which has been brought on record by way of Annexure-3, reveals that Khesra No. 1251 is not the subject matter of the sale deed and rather it is Khesra No. 1291. In the complaint case also the description of lands bought through sale deed dated 11.12.1946, mentioned at paragraph no. 5 of the complaint, reveals that erroneously Khesra No. 1251 has been written though in the sale deed there is no Khesra No. 1251 and rather there is mention of Khesra No. 1291. Thus, the Court finds that if the



opposite party no. 2 claims right with regard to Khesra No. 1251, there being no material to show that Khesra No. 1251 belongs to the opposite party no. 2 or he has exclusive right, title and interest over the same, definitely and surely the matter has to be thrashed out before the Civil Court of competent jurisdiction and not through the process of the Court on the criminal side, which would clearly be an abuse of the process of the Court.

9. In this connection, the Court would refer to the decision of the Hon'ble Supreme Court in **Indian Oil Corporation vs. NEPC India Limited** reported as (2006) 6 SCC 736, where at paragraph no. 13 it has been observed as under:

“13..... Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged.....”

10. Similarly, the Court finds that the present case has been instituted for exerting undue pressure on the petitioners and to harass them. In this connection, it would be useful to refer to the judgment of the Hon'ble Supreme Court in **State of Haryana v. Bhajan Lal** reported as 1992 Supplementary (1) Supreme Court Cases 335 where at paragraph no. 102,



categories have been enumerated where the Court should exercise its inherent power under Section 482 of the Code. The same reads as under:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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 omission 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, no 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 ground for proceeding 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 proceeding 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 mala fide 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.”

11. In the opinion of the Court, the present case is covered under category 7 of the aforesaid judgment in the case of **Bhajan Lal** (supra) at paragraph no. 102.

12. For reasons aforesaid, the application is allowed. The entire criminal proceeding arising out of Complaint Case



No. C-530 of 2011, including the order dated 23.09.2013, by
which cognizance has been taken, stand quashed.

(Ahsanuddin Amanullah, J)

Vinita/Sarvesh

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