

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 48186 of 2014

Arising Out of Complaint Case No.-317 C Year-2013 Thana- GAYA COMPLAINT CASE
District- Gaya

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1. Chinta Srivastava @ Usha Srivastva, Wife of Late Akhauri Sachitanand Prasad.
 2. Ajitabh @ Pintu Prasad Akhauri @ Akhauri Amitabh Son of Late Akhauri Sachitanand Prasad.
 3. Ajay Prasad Akhauri @ Akhauri Ajay Prasad Son of Late Akhauri Rajan Lal.
 4. Kauleshar Singh, Son of Late Khelawan Singh. All residents of Village-Raniganj, P.S.- Imamganj, District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Rukmini Devi, Wife of Shambhu Prasad Gupta, resident of Village-Raniganj, P.S.- Imamganj, District- Gaya.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar and Mr. Sanjay Kumar Tiwari, Advocates
For the State	:	Mr. M. K. Khare, A.P.P.
For the Opposite Party/s	:	Mr. Mayank Bilochan, Advocate

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 05-03-2019

Heard learned counsel for the petitioners; learned A.P.P.

for the State and learned counsel for the opposite party no. 2.

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 01.10.2013, passed in complaint case no. C 317/13 by the SDJM, Sherghati, Gaya, by which the learned court below has taken



cognizance against the petitioners above named U/Ss 323, 380, 384 of the I.P.C.”

3. As per the complaint filed by the opposite party no. 2, the petitioners are said to have entered upon the land belonging to the complainant in terms of *Basgit Parcha* issued in her favour and demanded extortion of Rs. 30,000/- for being allowed to remain on the land. It was further alleged that on 11.06.2013, the petitioners armed with weapon had entered into her house and had assaulted her and her son and husband and that Rs. 4,000/- cash, one ring of gold worth Rs. 6,000/-, two pairs of Dhoti, one Silver Chain and Payal worth Rs. 2,000/- was taken away and also the ear-rings of the complainant.

4. Learned counsel for the petitioners submitted that the complaint case is totally false and is a counter blast to the complaint filed by the husband of petitioner no. 1 being Complaint Case No. 280 of 2013, before the Sub-divisional Judicial Magistrate, Sherghati, Gaya on 28.05.2013 against the informant, her family members and others with regard to attempt to forcibly occupy the ancestral property of the husband of the petitioner no. 1. It was submitted that in the said complaint, it was clearly stated that the so called *Basgit Parcha* issued in favour of the opposite party no. 2, upon details sought from the authority under the Right to Information Act, revealed that no such *Basgit Parcha* was



issued by the Imamganj Anchal. It was submitted that the husband of the petitioner no. 1 has also approached the High Court in C.W.J.C. No. 10772 of 2008 in which, by order dated 11.05.2009, a Bench of this Court had directed that possession of the petitioners over the land in question, if already not disturbed, shall not be disturbed. Learned counsel submitted that after filing of the present application, the writ petition was disposed off with liberty to the parties to move before the appropriate authority. It was submitted that in the aforesaid background, when there is absolutely no basis for the informant to claim possession over the land, there cannot be any question of her being in possession or the petitioners committing the offence on the land which belongs to the petitioners.

5. Learned A.P.P. submitted that the Court has taken cognizance based on the materials before it which cannot be said to be bad in law. However, on a query of the Court as to how the informant can claim that she was in possession over the land when the document i.e., *Basgit Parcha* itself has been found to be forged and fabricated, which fact has not been denied by the opposite party no. 2, who has not filed any counter affidavit, learned counsel did not have any answer.



6. Learned counsel for the opposite party no. 2, also supported the order taking cognizance on the ground that there were materials before the Court to do so. However, on a query of the Court as to how the claim of possession over the land in question is tenable when the basis of such claim, that is, *Basgit Parcha* itself has been found to be forged and fabricated and not issued by the Imamganj Anchal, learned counsel could not reply to the query of the Court. Further, on a query of the Court as to what was the basis of the claim of possession when there has been no denial of *Basgit Parcha* being forged and fabricated as also the complaint case filed by the husband of petitioner no. 1 being much prior to filing of the present complaint case with regard to the same piece of land, learned counsel could again not give any reply.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out. Under Section 482 of the Code, the Court is also required to consider the overall facts and circumstances relating to a criminal proceeding so as to ensure that the process of the Court is not abused and further that the ends of justice are secured. In the present case, as has rightly been submitted by learned counsel for the petitioners, there was a complaint case filed with regard to the possession of the



petitioners being disturbed by the informant and others which was filed prior to the filing of the present complaint case and there being evidence on record, which has not been controverted by the opposite party no. 2, with regard to the Anchal of Imamganj giving a certificate that no such *Basgit Parcha* in favour of the complainant was ever issued, clearly indicates that the present complaint case is a counter blast to Complaint Case No. 280 of 2013 filed by the husband of the petitioner no. 1 against the informant and others. Further, the allegation of assault and taking away of Rs. 4,000/- and various jewellery also, appears to be cosmetic addition to make the offence serious, especially when an overall view is taken in the matter, there does not seem to be any occasion for the petitioners to commit such act and taking away of Rs. 4,000/-, ear-ring etc., in view of the materials brought on record, the land belonging to the petitioners' family and there being no valid or acceptable document on record to show that the so called *Basgit Parcha* was genuine and issued in favour of the opposite party no. 2, coupled with the fact that already, prior to filing of the present complaint case, the husband of the petitioner no. 1 had filed a complaint case with regard to the same land and the allegation being that attempt was made to disturb the possession of the petitioners over the land in question, the Court



finds that the present case has been filed for creating a defence and for wreaking vengeance against the petitioners and, thus, allowing the same to continue clearly would be an abuse of the process of the Court.

8. For reasons aforesaid, and for securing the ends of justice, the application is allowed. The entire criminal proceeding arising out of Complaint Case No. C 317 of 2013 as well as the order taking cognizance dated 01.10.2013 passed by the SDJM, Sherghati, Gaya against the petitioners stand quashed.

(Ahsanuddin Amanullah, J.)

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