

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.23992 of 2013

Arising Out of PS. Case No.-95 Year-2013 Thana- SHEOHAR District- Sheohar

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Dwarika Nath Prasad, S/o Sri Bhola Nath Prasad, Resident of Ward No. 10,
Nagar Panchayat Sheohar, P.S- Sheohar, District- Sheohar.

... .. Petitioner

Versus

1. The State of Bihar
2. Sri Nathuni Chaudhary S/O Sri Sheoji Choudhary, Tax Daroga, Nagar Panchayat Sheohar, P.S- Sheohar, District- Sheohar.
3. Sri Amar Nath Choudhary son of Kanhai Choudhary, Head Clerk, Nagar panchayat, Sheohar, P.S.-Sheohar, District-Sheohar

... .. Opposite Parties

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with

Criminal Miscellaneous No. 40990 of 2016

Arising Out of PS. Case No.-95 Year-2013 Thana- SHEOHAR District- Sheohar

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Dwarika Nath Prasad son of Sri Bhola Nath Prasad, Resident of Ward No. 10,
Nagar Panchayat Sheohar, P.S.-Sheohar, District-Sheohar

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Versus

1. The State of Bihar
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Appearance :

(In Criminal Miscellaneous No. 23992 of 2013)

For the Petitioner/s : Mr.Rajesh Mohan

For the Opposite Party/s : Mr.Bhanu Pratap Singh, APP



(In Criminal Miscellaneous No. 40990 of 2016)

For the Petitioner/s : Mr.Rajesh Mohan
For the Opposite Party/s : Mr. Sri Rajendra Singh Shastriji

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL ORDER

17 13-03-2019 Heard learned counsel for the petitioner, learned counsel for the State as well as learned counsel for the Nagar Parishad.

2. In Criminal Miscellaneous No.23992 of 2013, the petitioner is challenging the First Information Report being Sheohar P.S. Case No.95 of 2013 (G.R. No.318 of 2013) registered for the offence under Sections 313, 314, 315, 316, 324, 325, 309, 215 and 336 of the Bihar Municipal Act, 2007 as well as under Section 353/506 of the Indian Penal Code.

3. So far Criminal Miscellaneous No.40990 of 2016 is related to quashing the order of cognizance dated 08.12.2014 passed in connection with Sheohar P.S. Case No.95 of 2013 (G.R. No.318 of 2013) registered for the offence under Sections 313, 314, 315, 316, 324, 325, 309, 215 and 336 of the Bihar Municipal Act, 2007 as well as under Section 353/506 of the Indian Penal Code.

4. Both the cases are arising from the same nature of dispute concerning the same chunk of piece of land and



between the same parties, hence, for convenience and with consent of the parties, both the cases are being disposed of by this common order.

5. As per the petitioner, the facts of this case inter alia are as follows:-

5.1. That Sheo Govind Sah, grand-father of the petitioner received 38 decimal of land from Raja Girish Nandan Singh, Sheohar, being C.S. Khata No.551, C.S. Khesra no.3134 and 3135 through a Khestta Patta. After vesting of Jamindari, the Mukhiya of Gram Panchayat Raj Sheohar, issued rent receipts upto 1956 and at the same time late Sheo Govind Sah, purchased 5 decimal of Khatiyani land in Khesra no. 5529, C.S. Plot no.3134 and R.S. Khata no. 1973 from one Lakshman Sah and others through sale deed no. 3737. It has also been claimed by the petitioner that the land which has been mentioned hereinabove in provisional Survey recorded in the name of Gram Panchayat Raj Sheohar, but when a Consolidation proceeding was started, he filed a Consolidation Case no. 402 of 1989-90 under Section 10(2) of the Bihar Consolidation Act for correction of Jamabandi. The Consolidation Officer, Sheohar, after spot verification and measurement of the said land, passed order to place the Register-II from the office of C.O., Sheohar.



On 12.06.1990, the Revenue Clerk (Halka Karamchari), Circle Officer, Sheohar, produced before the Consolidation Court of the land appertaining to Jamabandi no.197 (281/282) area 7 ½ (38 decimal), passed the order of correction of Jamabandi and land was recorded in the name of late Sheo Govind Sah on the basis of Patta issued by Raja Girish Nandan Singh. Whereupon, the Gram Panchayat Raj Sheohar, through Mukhiya, filed Title Suit No.146 of 1990 against the petitioner and also initiated two encroachment proceedings upon 1 decimal, 2 decimal and 14 decimal lands respectively. The petitioner appeared and filed written statement in Title Suit No.146 of 1990, the same was dismissed for want of prosecution and appeal was not filed nor the suit was restored, but in the meantime, the Consolidation Officer finally directed to rectify the revenue records and the name of the present petitioner be entered in all records in respect of said land in Jamabandi no.197 (281/282) and whereafter no appeal was filed.

5.2. In the meantime, the petitioner also filed Title Suit with respect to the said land vide Title Suit No.13 of 1995 for declaration of his title and confirmation of possession. The Title Suit No.13 of 1995 was decided in favour of the plaintiff i.e. the present petitioner. The Executive Officer-cum- Circle Officer,



Sheohar, vide order dated 25.02.2002 stopped the construction upon the disputed land, which compelled the brother of the petitioner to approach this Court in C.W.J.C. No.6483 of 2002 (Bhagwan Prasad vs. State of Bihar and Ors.). In the meantime, being aggrieved by the order in Title Suit No.13 of 1995 in favour of the present petitioner, the State of Bihar preferred an appeal vide Title Appeal No.29 of 2002, which was dismissed, but later on, restored and the same and partly allowed in favour of Nagar Panchayat. Against that, the petitioner has filed Second Appeal No.225 of 2011 alongwith second Appeal No.212 of 2011 filed by his brother- Bhagwan Prasad. Both the appeals were heard together and by judgment and order dated 17.08.2013, the judgment and decree passed by the Trial Court as well as Appellate authority having been set aside and accordingly, the matter has been relegated to the trial Court. It will be relevant to quote paragraph no.30 of the said judgment, which reads as under:-

“30. In the result, both the Second Appeals are allowed. The judgment and Decree of the lower appellate court are hereby set aside and ex-parte Judgment and Decree of the Trial court is also set aside and the matter is remanded back to the trial Court for a fresh decision as indicated above in paragraph 26 according to law. In view of the facts



and circumstances of the case, no order as to cost.”

6. As per the petitioner, Title Suit is related to Khata no. 551, C.S. Khesra no.3134 and 3135 and there is no litigation with respect to Khesra no.5529, which was purchased by the grand-father of the petitioner.

7. Learned counsel for the petitioner submits that the F.I.R. is basically related to Khesra No. 5529, which was not the subject matter of any dispute whatsoever and the authorities of the Nagar Parishad are always disturbing the petitioners in constructing the building over the said land and they used to initiate encroachment proceedings without any cause, that led to his harassment and the Title suit with respect to Khesra no.3134 and 3135, is pending for adjudication on remand in Title Suit No.13 of 1995 and the outcome of the judgment will decide the course of action.

8. Learned counsel for the petitioner submits that lodging of this F.I.R. against the petitioner is nothing but an abuse of process of the Court in view of the fact that when the Title Suit with respect to C.S. Plot No.3134 and 3135 has not come to an end as this Court has remanded back the case to the Trial Court after setting aside the judgment and decree of the



Trial Court and the Appellate Court for fresh adjudication, inasmuch as, the construction is being made in Khesra No.5529 and only the challenge has been made by the Nagar Panchayat with respect to the land of Plot No.3134 and 3135 of C.S. Khesra No.5529, in such circumstance, the allegation made in the F.I.R. with respect to illegal construction over the land is not sustainable as so long the land which has been purchased by the grand-father of the petitioner is not declared to be illegal or unless there is violation of certain provisions of the Municipal Law, the lodging of criminal case is nothing but an abuse of process of law, inasmuch as, when both the parties are litigating in Civil Suit with respect to the land which was settled to the grand-father of the petitioner, so long the dispute does not arrive to a finality, the lodging of criminal case is a wrong exercise of power and it requires interference by this Court.

9. Learned counsel for the petitioner has placed reliance on the decisions reported in **2015 (4) PLJR 144, 2016 (4) PLJR 274** and in the case of **Indian Oil Corporation vs. NEPC India Ltd. And Others** reported in **(2006) 6 SCC 736**.

10. Whereas, learned counsel for the Nagar Parishad submits that rightly the authorities have lodged the F.I.R. against the petitioner as when he was asked to stop the



construction over the disputed land, he ignored the same and went on making construction over the land, itself indicative of that fact that he does not have any respect for the law. He further submits that the petitioner always put hindrance in carrying out their official work and seriously disputed the title over the land bearing Khesra no.3134 and 3135 including the Khesra no.5529.

11. The basic thrust has been given by the learned counsel for the petitioner that basically it is a civil dispute, but has been given the colour of criminal case, when the title is in dispute then the authority of Nagar Parishad should await the result of the Title Suit and whoever will be succeeded will have a right over the property. When the matter is in litigation and the grand-father of the petitioner has purchased the land over which the house has been constructed then there cannot be any litigation of putting the hindrance in carrying out the official duty. But, learned counsel for the Nagar Parishad has vehemently submitted that fundamentally it is a criminal act and does not require any interference by this Court.

12. Having heard both sides, the law is very much clear, if the matter is basically civil dispute the same cannot be converted into criminal case settling the civil dispute.



13. In the case of Indian Oil Corporation (supra) it has been held that the Court can quash the complaint when the allegation made in 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 the case alleged against the accused persons, the Higher Court may quash the complaint or F.I.R. as it would be clear cut abuse of the process of the Court, as when the criminal proceeding is found to have been initiated with mala fides/ malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable, the court would interfere with the proceeding. When the given set of facts purely a civil wrong or purely a criminal offence or a civil wrong as also a criminal offence, the Court would interfere in first case, but would not require to interfere with second and third case. A commercial transaction or contractual dispute, apart from constituting a cause of action for seeking remedy in civil law, may also constitute criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has not been availed, is not by itself a ground to quash the criminal



proceedings, but when primarily it is a civil dispute, it will be justifiable for the court to interfere in the proceeding as these days the impression is growing that civil law remedy consuming a lot of time and do not protect the interest of the parties.

14. It will be relevant to quote paragraph nos. 12 and 13 of the said judgment, which read as under:-

“12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few - Madhavrao Jiawaji Rao Scindia v. Sambhajirao Chandrojirao Angre, State of Haryana vs. Bhajanlal, Rupan Deol Bajaj vs. Kanwar Pal Singh Gill, Central Bureau of Investigation v. Duncans Agro Industries Ltd., State of Bihar vs. Rajendra Agrawalla, Rajesh Bajaj v. State NCT of Delhi, Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., Hridaya Ranjan Prasad Verma v. State of Bihar, M. Krishnan vs Vijay Kumar, and Zandu Phamaceutical Works Ltd. v. Mohd. Sharaful Haque [2005 (1) SCC 122]. The principles, relevant to our purpose are :-

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a



few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

*(v) A given set of facts may make out :
(a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.*

13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a



tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. 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. In G. Sagar Suri vs. State of UP , this Court observed (S.C.C. p. 643, para 8):

"It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

15. In the present case, earlier the Executive Officer-cum- Circle Officer issued order dated 25.02.2002 for stopping the construction over the land, this court in C.W.J.C. No.6483 of 2002 quashed the order in view of the fact that Title Suit was



decreed in favour of the present petitioner. Primarily, the present dispute is the civil dispute between the parties and the result of the Title Suit will decide the entitlement of right title over the land.

16. In such view of the matter, this Court finds substance in the submission of learned counsel for the petitioner. Accordingly, the First Information Report being Sheohar P.S. Case No.95 of 2013 pending in the Court of the Chief Judicial Magistrate, Sheohar, as well as the order of cognizance dated 08.12.2014 passed in connection with Sheohar P.S. Case No.95 of 2013 are hereby quashed. Consequently, both the quashing petitions are allowed.

(Shivaji Pandey, J)

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