

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.30189 of 2013

Arising Out of PS. Case No.-1109 Year-2011 Thana- NAWADAH COMPLAINT CASE
District- Nawada

-
1. Bachchan Singh @ Bachan Kumar, S/O Late Babulal Singh Resident Of Mohalla- New Area Nawadah (Gopalpur House) P.S + District Nawadah.
 2. Prem Shankar @ Pappu S/O Late Ram Charitra Singh, Working Staff In Krishna Hotel, New Area Nawadah, P.S + District- Nawadah.
 3. Rajeev Kumar, S/O Late Basant Narayan Singh, Resident Of Mohalla- New Area Nawadah, P.S + District- Nawadah.
 4. Sanoj Kumar, S/O Ram Sharan Singh, Resident Of Mohalla- New Area, Nawadah, P.S + District- Nawadah.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Vijay Kumar Sinha @ Sona Babu Advocate, S/O Late Ram Lal Sharan Sinha, Resident Of Mohalla- New Area Nawadah (South Of S.B.I.), P.S + District- Nawadah.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Arun Kumar, Advocate
For the Opposite Party/s	:	Mr. Sanjay Kumar Grijiaghey, Advocate
For the State	:	Mr. Md. Aslam Ansari, APP

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

ORAL JUDGMENT

Date : 01-02-2019

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, 1972 (hereinafter referred to as the 'Code') for the following relief:

“That the present application is being filed for quashing the order dated 17.06.2013 passed in protest Complaint Case No. 1109/2011 by Sri Ranjeet Prasad, learned Judicial Magistrate 1st Class, Nawadah whereby and where-under



cognizance of offence under Section 379/427/323 of the Indian Penal Code has been taken against the petitioners as well as whole criminal prosecution arising out of the Protest Complaint Case No. 1109/2011 without taking into consideration the material fact that the Protest Complaint Case has been filed after acceptance of final form in main Police case bearing Nawadah Town P.S. Case No. 359/08 which has been instituted as a Counter version of earlier instituted F.I.R. by the accused petitioner No. 1 and finding is the present case is arising out of purely a civil dispute and hence the whole criminal prosecution is malicious prosecution.”

3. The Court has taken cognizance against the petitioners on the basis of Protest-cum-Complaint Petition filed by the opposite party no. 2. Initially, the the opposite party no. 2 had filed Complaint Case No. 144 of 2008 on 14.02.2008 against the petitioners alleging that when he was constructing a *Garage* over his land, the petitioners came and assaulted the the opposite party no. 2 and other family members. The case was sent by the Court to the police for registering F.I.R. under Section 156(3) of the Code resulting in institution of Nawadah Town P.S. Case No. 359 of 2008 dated 11.11.2008. However, the police submitted final form on 14.12.2008 finding the allegations not true. Upon this, the opposite party no. 2 filed Protest-cum-Complaint Petition which was treated as Complaint Case No. 1109 of 2011, in which the Court after conducting inquiry under Section 202 of the Code has taken cognizance against the petitioners under Sections



379/427/323 of the Indian Penal Code, which is impugned in the present proceeding.

4. Learned counsel for the petitioners submitted that in the same incident, they had filed Nawadah Town P.S. Case No. 40 of 2008 against the opposite party no. 2 and another person alleging that when the opposite party no. 2 was getting construction made on the land belonging to one Ajay Krishna of whose the opposite party no. 2 was caretaker, the opposite party no. 2 had abused the petitioner no. 1 and also assaulted him with *Khanti*. It was submitted that thereafter, the opposite party no. 2 had filed Complaint Case No. 144 of 2008, which was converted into Nawadah Town P.S. Case No. 359 of 2008 and the police had found it to be untrue and submitted final form. Learned counsel submitted that once the case has been found untrue by the police, only to exert undue pressure and harass the petitioners, a Protest-cum-Complaint Petition has been filed which is a misuse of the process of the Court. Learned counsel further submitted that in another case filed by the wife of the brother of the opposite party no. 2, against the petitioners, being Nawadah Town P.S. Case No. 43 of 2008, a co-ordinate Bench of this Court by order dated 24.04.2012 in Cr. Misc. No. 24 of 2011, filed by the petitioner no. 1 has set aside the cognizance taken by the Court in the said case.



5. Learned A.P.P. submitted that the Court has power under the Code to consider the Protest-cum-Complaint Petition and treating it as a full fledged complaint has rightly taken cognizance after due inquiry under Section 202 of the Code.

6. Learned counsel for the opposite party no. 2 submitted that from the genesis of the incident, based on admitted facts, it would be apparent that the petitioners were the aggressors. It was submitted that admittedly the construction was being made by the opposite party no. 2 and, thus, if the petitioners had not done any overt act, there was no occasion for the opposite party no. 2 to react. It was submitted that in such background, it is very natural that the persons who are aggrieved by any act would react to prevent what they were objecting to. It was submitted that in the present case, the opposite party no. 2 was getting some construction done and obviously, it was the petitioners who had taken action by taking the law in their hand and trying to prevent the opposite party no. 2 from making such construction. Thus, learned counsel submitted that the falsity of the case of the petitioner no. 1, against the opposite party no. 2 is clear from the fact that if the petitioners had not forcibly tried to prevent the construction or demolition, no incident of any nature would have occurred. Learned counsel submitted that this itself shows that the



aggressors were the petitioners and the victim was opposite party no. 2. It was further submitted that the law is settled that a particular situation may give rise to cause of action both on the civil and criminal side and the present case is once such instance.

7. Having considered the facts and circumstances and submissions of learned counsel for the parties, the Court does not find any merit in the application. As has rightly been submitted by learned counsel for the opposite party no. 2, the admitted factual matrix suggests that only the petitioners had reason to commit an overt act for preventing construction being made by the opposite party no. 2 and the opposite party no. 2 by making construction had no reason to unnecessarily get involved with the petitioners. Thus, from the facts it is apparent that the petitioners had cause of action to take the law into their own hand by preventing construction by the opposite party no. 2, whereas, the opposite party no. 2 does not appear to have any reason to commit any crime or assault because admittedly he was making construction and till the time the construction work would not have been disturbed, there could not be any occasion for him to retaliate or go on the offensive. The Court also finds substance in the contention of learned counsel for the opposite party no. 2 that this is a case where both civil and criminal proceedings are



maintainable and at this stage, it cannot be said that the allegations made in the Protest-cum-Complaint filed by the opposite party no. 2 are false or frivolous. Moreover, the petitioners have ample opportunity to prove their innocence at the appropriate stage before the Court below itself.

8. For reasons aforesaid, the application stands dismissed.

9. Let the Lower Court Records be returned forthwith.

(Ahsanuddin Amanullah, J)

P. Kumar

AFR/NAFR	
U	
T	

