

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.31681 of 2013

Arising Out of PS. Case No.-1521 Year-2012 Thana- NAWADAH COMPLAINT CASE
District- Nawada

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Siyaram Singh Son Of Late Ram Lakhan Singh At Present Resident Of Ram
Nagar Nawada P.O., P.S. and Distt - Nawada, Permanent Resident Of Village
Chandpur, P.O. Noor Sarai, P.S. Chandi Distt Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Nawada.
2. Satish Kumar Sinha, Nazir, son of late Shambhu Sharan Singh Civil Court
Nawada.
3. Md. Jaiki Haider, Assistant Nazir, son of not known to the petitioner Civil
Court Nawada.
4. Krishna Dallav Prasad, Survey Knowing Pleader Commissioner, son of not
known to the petitioner, Vakalatkhana Nawada Civil Court Nawada
5. Shyamdeo Das, Executive Magistrate son of not known to the petitioner
6. Krishna Prasad, Halwai Son of Late Lakshmi Lal Halwai, Mohalla Purani
Bazar, P.S. and Distt Nawada.
7. Raj Kumari Devi Wife of Shivnath Prasad
8. Shivnath Prasad son of not known to the petitioner
9. Ravi Shankar Prasad Son of Shivnath Prasad
10. Malti Devi Wife of Dharmendra Prasad
11. Yogendra Prasad Son of Karu Prasad

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Binod Kumar Singh, Advocate
For the Opposite Party/s	:	Mr. Alok Jha, Advocate
		Mr. Shiv Kumar Prasad, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 31-01-2019

Heard learned counsel for the petitioner; learned A.P.P.
for the State and learned counsel for the opposite parties no. 6 to
10. Nobody appeared on behalf of the remaining opposite parties
when the matter was taken up and heard.



2. The petitioner has 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 on behalf of the petitioner for quashing order dated 22.01.2013 of the learned CJM, Nawada passed in C.R.No. 1521/2012 whereby the complaint petition of the complainant/petitioner was dismissed under section 203 Cr.P.C.”

3. The complaint against the opposite parties filed by the petitioner is that when they had gone to the house of petitioner (complainant) for execution of a decree of the Court, they had wrongly delivered the possession of the property of the petitioner in favour of opposite parties no. 6 to 11, despite the petitioner objecting to the same on the basis of documents.

4. Learned counsel for the petitioner submitted that when the opposite parties had gone to the site for executing the decree of the Court in favour of the opposite parties no. 6 to 11, when they started demolishing the boundary wall of the petitioner, they were made aware of the fact that such land was not part of the decree and the same was at another place and this was also supported by one survey knowing Advocate whom the petitioner had called and despite him also pointing out that the land which the opposite parties were taking to be the land covered by the decree was not the land of the petitioner, the opposite parties went



ahead and delivered possession of such property in favour of the opposite parties no. 6 to 11. Learned counsel submitted that when the high handedness of the opposite parties was being objected to by the petitioner, but not heeded by them, he informed the Court on the same day and the Court also passed an order not to execute the decree; however, despite that the opposite parties went ahead and handed over possession of the land of the petitioner to the opposite parties no. 6 to 11, which is totally illegal. Learned counsel further submitted that the Court below has not taken cognizance only on the ground that there was no sanction from the District and Sessions Judge for such prosecution which was required as the action alleged was in compliance of a decree of the Court. Learned counsel submitted that this ground is totally erroneous. For such proposition learned counsel relied upon a decision of the Hon'ble Supreme Court in **Devinder Singh v. State of Punjab through CBI** reported as **AIR 2016 SC 2090**, the relevant being at paragraph no. 15. Learned counsel submitted that the Hon'ble Supreme Court has held that the fact whether an act was done in terms of the official duty cast upon the accused or otherwise could be dealt with after adducing evidence on the point but on the threshold the case should not be interfered with. Further, learned counsel relied upon another decision of a co-ordinate



Bench of this Court in **Baidyanath Hathi vs. The State of Bihar** reported as **2000 (3) PLJR 520**, the relevant being at paragraph no. 6, where distinction has been made between an act which can be integrally connected with the duties attached to the office so as to be inseparable from the same for protection as contemplated under Section 197 of the Code. Learned counsel submitted that Supreme Court has held that only allegations have to be seen by the Court at the initial stage. It was submitted that though the petitioner may also have civil remedy, but that would not debar or preclude him from instituting action equally on the criminal side and the present case also comes under such category. Learned counsel further submitted that the act of the opposite parties was not in discharge of their official duty. Learned counsel for the petitioner submitted that the decree itself was ex-parte for which he has filed a petition under Order 9 Rule 13 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'C.P.C.') for setting aside the decree, which was dismissed and the petitioner has filed an appeal against such dismissal, which is pending.

5. Learned A.P.P. very fairly submitted that though allegations have been made with regard to overt acts by the opposite parties and them delivering possession of a piece of land, which was not part of the decree in favour of the opposite parties



no. 6 to 11, but from the facts and circumstances of the case and plain reading of the complaint, it is obvious that the same was only the stand of the petitioner before the opposite parties, who had come to enforce a decree of the Court and whether the land which was not delivered to the opposite parties no. 6 to 11 was the correct land or there was some error in it, is a purely civil matter and that too, it is for the competent Court to go into such aspect and then after following a procedure, in accordance with law, come to a categorical finding as to whether the land which was delivered to the opposite parties no. 6 to 11 by the other opposite parties belongs to the petitioner and was outside the purview of the decree. It was submitted that the Court below has, thus, rightly taken a view with regard to there being no sanction as clearly the opposite parties had taken steps in furtherance of the duty cast upon them by law for delivering possession in terms of a decree of the Court and even if there might have been some error in the actual execution, the same would not fasten criminal liability on the opposite parties, who are protected by law for action taken by them in terms of the decree and execution of the same under the due authority of a competent Court of law.

6. Learned counsel for the opposite parties no. 6 to 10 submitted that the order of the Court in the title suit became final



and in that the petitioner was also a party and, thus, it is not open to him to dispute that the land in his possession fully belonged to him, otherwise, he would not have been a party to the suit. Learned counsel further submitted that the allegation of any demolition of any boundary or tree would also not give any cause of action on the criminal side to the petitioner for the reason that even if it is assumed for the sake of argument that such act was done, it related to the portion of the property which was found covered under the decree of the Court and of which possession has been delivered and, thus, it was only within the capacity of the opposite parties no. 6 to 11, in whose favour there was a decree and possession was delivered to make any complaint with regard to any item or material which may have been destroyed during the course of such delivery of possession. Learned counsel submitted that the petitioner in fact, for certain acts alleging theft etc. against the opposite parties has also lodged Nawada Town P.S. Case No. 558 of 2012. It was submitted that the allegations that some order of stay by the Court concerned against execution of decree was also communicated to the opposite parties on the same day is only a mere statement without there being any evidence to support such contention. Learned counsel further submitted that the action already having been completed within a few hours, any order



staying execution could not have been communicated to the officers i.e., the opposite parties prior to completion of such exercise on the same day. Thus, learned counsel submitted that even otherwise, from a plain reading of the of the entire complaint, it is apparent that the same is absolutely *mala fide* with an intention to harass the opposite parties after the petitioner had lost his claim in the title suit.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the present application. The entire allegation against the opposite parties is related directly to their role with regard to actual execution on spot of a decree of a Court. The same required delivery of possession and was in the presence of the officers of the Court and the local administration as well as parties involved, including the petitioner and the opposite parties no. 6 to 11. The only grievance which the petitioner could have is that the land which the opposite parties got demarcated was not the correct land for which there was a decree and order for delivery of possession, as the same was a different piece of land. However, it is not disputed that even the land claimed by the petitioner was part of the overall chunk of land from which delivery of possession had to be given to the opposite parties no. 6 to 11. In



that background, the exercise carried out by the team under the authority of the Court is obviously in the discharge of official duty/responsibility cast upon the concerned opposite parties for such execution of the decree. At this juncture, the Court would indicate that the allegation in the complaint itself discloses that though the petitioner had pointed out with regard to his land not being covered and being part of the decree and still there being insistence by the opposite parties for such delivery, indicates that the opposite parties were of the firm opinion and belief that the portion which is in dispute and which has been handed over to the opposite parties no. 6 to 11, was delivered in terms of the decree which was duly certified by the opposite party no. 4, who was a survey knowing Pleader Commissioner and part of the official team. Thus, even if it is assumed that there may have been some error in the actual demarcation, it cannot be said that such act would amount to a criminal offence which can be prosecuted in the manner in which it has been done. The law requires that for such grievance also, the aggrieved party has to move before the Civil Court which shall pass necessary orders for finding out as to whether the land, of whose possession has been delivered, was the actual corpus of the decree which has been executed or not. Unless the same is done, there cannot be any question of any



prosecution, much less criminal prosecution of the opposite parties. Only upon there being a specific finding and decision of the Civil Court of competent jurisdiction that the land whose possession has been delivered was not part of the decree in question and was a separate land belonging to the petitioner, then only a stage would come where some sort of cause of action would accrue to the petitioner. However, prior to that the whole issue itself is totally premature and misconceived.

8. At this juncture, the Court would take note of the fact, as submitted by learned counsel for the petitioner that against the ex-party decree, he has filed a petition under Order 9 Rule 13 of the C.P.C. for setting aside such decree, which having been dismissed, appeal has been preferred, which is pending, itself indicates that the land of the petitioner was also part of the suit land, for had it not been so, there was no occasion for the petitioner to be aggrieved by such decree or to move for setting aside of the decree. This also is a pointer to the fact that the stand of the petitioner that his land of whose possession was delivered to the opposite parties no. 6 to 11, was outside the area of the land which was part of the decree, cannot be believed.

9. Coming to the impugned order, the Court finds that the dismissal of the complaint is not solely based on lack of



sanction from the District and Sessions Judge, but also in view of a civil case pending between the parties. The Court in the end has dismissed the complaint on both such grounds which is not restricted to the lack of sanction by the District and Sessions Judge. Such fact of litigation being pending is also factually correct as admittedly the petition for setting aside the decree has been moved by the petitioner himself in appeal which, according to learned counsel for the petitioner, is still pending. Moreover, the Court has no hesitation to hold that the entire action of the opposite parties, which has been shown to amount to a criminal offence is totally in the discharge of the official duties cast upon the opposite parties pursuant to the decree of a competent Court of law.

10. The Court, on the issue that in a particular situation, both civil and criminal action may be maintainable, cannot be disputed, but, in the considered opinion of the Court, the present case does not come under such category as no criminal offence/charge is made out against the opposite parties for whatever action they may have undertaken which was only with a view to implement and execute a decree of the Court and nothing beyond that. Thus, the case of **Devinder Singh** (supra) referred by learned counsel for the petitioner having no similarity on facts



cannot be of any use to the petitioner, for in the said case, the prosecution was for fake encounter or death caused by torture. Similarly, in the case of **Baidyanath Hathi** (supra), the allegation was that the officer had abused the complainant in filthy language and had pushed him and forced him to sit on the jeep and of deliberately insulting him. Thus, the facts of the said case also are totally different as compared to the facts of the present case.

11. For reasons aforesaid, besides finding no error in the order impugned, this Court also independently finds that the complaint case is only for the purpose of wreaking vengeance and to harass the opposite parties and rightly the same has been dismissed.

12. Accordingly, the present application stands dismissed.

13. Let the Lower Court records be returned forthwith.

(Ahsanuddin Amanullah, J)

P. Kumar

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