

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.10420 of 2017

Arising Out of PS. Case No.-392 Year-2015 Thana- SIWAN COMPLAINT CASE District-
Siwan

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Firoz Ali Khan, S/o Late Shahajad Ali Khan, R/o Mohalla - Barharia Road
Siwan, P.S. Siwan T , District - Siwan

... .. Petitioner/s

Versus

1. The State of Bihar
2. Nasimul Haque, S/o Late Haji Ajimul Haque, R/o Mohalla - Hospital Road,
P.S. Siwan Town , District - Siwan

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Satyendra Rai-Advocate
For the State	:	Mr. Mritunjay Kumar Nirala-A.P.P.
For the O.P. No.2	:	Mr. Ranjeet Kumar-Advocate
		Mr. Kundan Kumar-Advocate
		Mr. Ranjeeta Singh-Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

6 09-05-2019 An affidavit has been filed on behalf of O.P. No.2,

taken on the record.

Heard learned counsel for the petitioner as well as

learned Additional Public Prosecutor along with learned counsel

for the O.P. No.2.

Petitioner has challenged the order dated 15.11.2016

passed by the A.C.J.M.-VI, Siwan relating to Complaint Case

No.392 of 2015, whereby and whereunder petitioner has been

summoned to face trial for an offence punishable under Section

147, 385, 504/ 149 I.P.C.

It has been submitted at the end of the learned counsel



for the petitioner that whatever allegation has been attributed, are palpably false. It has further been submitted that from the complaint petition itself, it is evident that there happens to be specific disclosure that while the complainant/ O.P. No.2 along with purchaser Jakir Hussain was engaged in demarcating land covering an area of two kattha, ten dhoor and while was engaged in construction, petitioner along with others came thereupon and then, demanded Rs.10,00,000/- (ten lacs) as rangdari, failing which also directed to face dire consequence, is found nothing, but an absurd story, more particularly in the background of the fact that there happens to be an admission at the end of the O.P. No.2/ complainant while contesting the J. C. Case No.10 of 2016 that over ten kattha of land of Khesra No.1 of Khata No.6, petitioner's ancestor Bibi Kamrun Nisha has got title and possession and so, petitioner's presence over the land under the dispute is admitted one. That being so, petitioner is not a stranger, whose appearance could be prohibited in the eye of law. Apart from this, it has also been submitted that it was purchaser Jakir Hussain, who would have any kind of grievances against the petitioner. Had there been justification in the allegation so attributed at the end of the O.P. No.2/ complainant, it has further been submitted that this case has



purposely been filed in order to coerce the petitioner to forbid to proceed with the suit/ litigation relating to the land under dispute. Furthermore, it has also been submitted that in the aforesaid background, when the criterion so enunciated in the ***State of Hariyana & Ors. Versus Bhajan Lal & Ors. reported in AIR 1992 SC 604***, is taken, whereupon instant prosecution justifies its quashing.

On the other hand, learned Additional Public Prosecutor along with learned counsel for the O.P. No.2 vehemently challenged the submission having at the end of the learned counsel for the petitioner. It has further been submitted that the petitioner/ accused has concealed the actual affair by duping the officials or taking them in their collusion without noticing the O.P. No.2 as well as his other family members got their name erased from Jamabandi Register, which was running since before and substituted their names. After coming to know about the same, the aforesaid order was challenged and lastly, land has been allowed to be renamed in the name of O.P. No.2 and his family members. In the aforesaid background, such kind of criminal activity has been taken up at the end of the petitioner. It has further been submitted that nephew of the O.P. No.2/ complainant had executed a sale deed in favour of Jakir



Hussain and as, by way of an affidavit, they have admitted status of the O.P. No.2/ complainant to be the Manger of the family, on account thereof, this case has been instituted, as dire consequences have been directed to be faced in case, Rs. Ten Lacs is not paid as rangdari and in the aforesaid background, the order impugned is justified and is fit to be confirmed.

Two kinds of eventuality is found whenever an order of cognizance is being challenged. The first one is with regard to propriety of the order having in accordance with Section 190 of the Cr.P.C. The second eventuality is over validity of the prosecution. So far propriety of the order is concerned, it is needless to say that at the present moment, only prima facie case has to be seen. So far validity of the prosecution is concerned, the aforesaid theme happens to be times without number subject to consideration before the Hon'ble Apex Court and during course thereof, more or less, the criteria ultimately laid down by the Hon'ble Apex Court in *State of Hariyana & Ors. Versus Bhajan Lal & Ors. reported in AIR 1992 SC 604 (supra)* is still commanding the same. For better appreciation, the same is quoted below:-

“(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 commission 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, on 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 grounds for proceedings 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 proceedings 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 malafide 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.”



Now, coming to facts of the case in the background of admission over presence of petitioner's ancestor land under dispute over 10 kattha (Annexure-3) in consonance with the allegation so attributed, the instant prosecution is found duly eclipsed by the principle laid down by the Hon'ble Apex Court (supra).

Accordingly, the order of cognizance is set aside. Petition is allowed, but with regard to petitioner alone.

(Aditya Kumar Trivedi, J)

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