

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.47469 of 2014

Arising Out of PS. Case No.-2562 Year-2013 Thana- KATIHAR COMPLAINT CASE
District- Katihar

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Navin Kumar @ Naveen Kumar Yadav S/o Kaushalendra Prasad Yadav R/o
Village - Kumaripur (Maheshpur), P.S. - Manihari, District- Katihar.

... .. Petitioner/s

Versus

1. State of Bihar
2. Manoj Kumar Yadav S/o Late Parmeshwar Prasad Yadav R/o Village -
Kumaripur (Maheshpur), P.S. - Manihari, District- Katihar.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Rajnish Kumar, Advocate
For the Opposite Party No. 2	:	None
For the State	:	Mr. Jharkhandi Upadhyay, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 26-03-2019

Heard learned counsel for the petitioner and learned
A.P.P. for the State.

2. Despite, after service of notice, the opposite party no.
2 having entered appearance through learned counsel and his
name also appearing in the cause list, nobody was present when
the matter was taken up and heard.

3. The petitioner has moved the Court under Section
482 of the Code of Criminal Procedure, 1973 for the following
relief:



“That this is an application for quashing against the order dated 08.09.2014 passed by Learned Sri Deepak Kumar Judicial Magistrate, Ist Class, Katihar whereby and whereunder he has been pleased to take cognizance against the accused persons including the petitioner in Complaint Case No. CA 2562/13 for the offence punishable under Section 427/34 of the Indian Penal Code in most arbitrary and illegal manner.”

4. The allegation against the petitioner and three others is of having entered upon the land of the opposite party no. 2- informant-complainant and his sister and destroying maize crops of about Rs. 10,000/- and also taking away of Rs. 3,000/- from the pocket of the labourer of the opposite party no. 2 and also of assaulting him by fists and slaps and threatening him.

5. Learned counsel for the petitioner submitted that there is land dispute between the parties and when the lands were being measured, dispute was raised by the opposite party no. 2 and to exert pressure, this false case has been instituted. Learned counsel submitted that though the original F.I.R. i.e., Manihari P.S. Case No. 60 of 2013, dated 27.04.2013 was lodged under Sections 341, 323, 379, 504, 427/34 of the Indian Penal Code, but the police submitted final form and in fact also recommended for taking action against the opposite party no. 2 under Sections 182 and 211 of the Indian Penal Code, as the allegations were found to be false. Learned counsel submitted that on the basis of protest



filed by the opposite party no. 2, the Court below has taken cognizance under Sections 427/34 of the Indian Penal Code. It was submitted that the said order is totally arbitrary as there is no material on record to show that there was any loss suffered by anybody of over Rs. 50/-. In this connection, learned counsel referred to the investigation by the police in which the place of occurrence has been described and on which there was no sign found with regard to destruction of maize plants. Learned counsel submitted that the place of occurrence was inspected on the same day by the police and no sign of any destruction of any maize crops having been found, taking of cognizance under Section 427 of the Indian Penal Code is not sustainable. Learned counsel further submitted that on the place of occurrence, the police has found only a few maize crops and the land was ploughed, meaning thereby that there was no standing maize crops, as alleged. Learned counsel submitted that Section 427 of the Indian Penal Code can be attracted only where there is a loss and in the present case, even if it is accepted that the land was ploughed, there was no loss of any standing maize crops, as no evidence of the same has been found and few maize crops were found from the neighbouring field on which maize crops were standing.



6. Learned A.P.P, upon going through the case diary, submitted that the place of occurrence was inspected on the same day and nothing has been found to suggest any destruction of crops and rather a few maize crops were found. However, on a query of the Court to learned A.P.P. as to when the cognizance has been taken under Section 427 of the Indian Penal Code which relates to mischief causing damage to the amount of Rs. 50/- and the police not finding any destruction of any maize crops, how such order could be sustained, learned A.P.P. could not answer the same.

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.

8. As has rightly been submitted by learned counsel for the petitioner, there being no evidence found on the ground with regard to destruction of any maize crops, there cannot be any question of there being damage caused of any amount. Thus, even if forcibly ploughing is accepted to be true, cognizance having been taken under Section 427/34 of the Indian Penal Code, in the considered opinion of the Court, is not proper.

9. For reasons aforesaid, the application is allowed. The entire criminal proceeding arising out of Complaint Case No. CA



2562 of 2013, including the order of cognizance dated 08.09.2014,
as far as it relates to the petitioner, stands quashed.

10. The documents received be returned forthwith.

(Ahsanuddin Amanullah, J.)

P. Kumar

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