

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.33134 of 2015

Arising Out of PS. Case No.-1265 Year-2014 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Braj Kishore Prasad, Son of Late Shiv Shankar Lal Resident of Advocate Colony, Gola Road, Police Station - Rupaspur, District - Patna
 2. Abhishek Kumar, Son of Sri Braj Kishore Prasad Resident of Advocate Colony, Gola Road, Police Station - Rupaspur, District - Patna

... .. Petitioner/s

Versus

1. State Of Bihar
2. Dharnidhar Mishra, S/o Late Ram Prabesh Mishra, Resident of - Ward No. 37, Advocate Colony, Gola Road, Police Station - Rupaspur, District - Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Tej Pratap Singh, Advocate Mr. Harsh Singh, Advocate Mr. Rajesh Kumar, Advocate Mr. Jitendra Pd. Shaha, Advocate
For the Opposite Party/s :		Mr. Ajit Kumar, APP
For the Complainant	:	Mr. Dharnidhar Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

27 17-03-2021 Heard the learned counsel for the parties.

The petitioners who are father and son amongst themselves seeks quashing of the order dated 06.06.2015 passed by the learned Judicial Magistrate 1st Class, Danapur, in Complaint Case No. 1265 (c) of 2014, whereby cognizance has been taken under Sections 323, 452 and 380 of the Indian Penal Code.

The complainant / Opposite Party No. 2 and the



petitioners are neighbours. It has been alleged in the complaint petition that a dispute between the neighbour namely the petitioner no. 1 and Opposite Party No. 2 had arisen with respect to measurement and demarcation of their respective boundaries. In order to settle that issue, a Land Settlement Case No. 111 / 12-13 before the LRDC, Danapur was filed which was pending adjudication. It has been alleged in the complaint petition that when the petitioners failed in their attempt to harass Opposite Party No. 2 any further by any legal means, they got a case instituted through one of their men, namely, Girja Manjhi against Opposite Party No. 2 and his two sons. As a result of the lodging of the aforesaid case, namely, Rupaspur P. S. Case No. 204 of 2014, the police personnel of the concerned police station, on one day, came and the Officer Incharge of the police station demanded keys of the main door of the house from the Opposite Party No. 2. On refusal of the Opposite Party No. 2 to hand over the



keys, he and his sons were assaulted by the police party and some personal belongings including cash were also taken away by them.

On the basis of the aforesaid complaint, a case *vide* Complaint Case No. 1265 (c) of 2014 was instituted for various offences but by the impugned order, cognizance has been taken only under Sections 323, 452 and 380 of the Indian Penal Code.

It has been pointed out on behalf of the petitioners that the accusation in the complaint petition is only with respect to getting a false case instituted against Opposite Party No. 2 and his family members and influencing the local police to take action in that case which had led to the occurrence, warranting the filing of the subject complaint.

The wife of Opposite Party No. 2, who is one of the witnesses in the complaint has stated in her deposition in the enquiry that she had heard a commotion outside her house on 10.10.2014 at about 2



o'clock in the night. One person had demanded the keys of the house. When that was refused, the accused persons broke open the lock of the house, entered the house and took away personal belongings. Her two sons also were assaulted. The police party took away her two sons. Her husband (Opposite Party No. 2) was also arrested. Nobody went to hospital. In the last part of her deposition, she has stated that the petitioners who are her neighbours were seen by her fixing the grill of the window of their house.

Similar statement has been made by the son of Opposite Party No. 2 but he has stated that on 10.10.2014 at about 2 o'clock, in the wee hours, when he got up after hearing loud arguments, he saw that his father was bleeding from his nose and one police officer in civil dress was wielding a *danda*. He had a physical scuffle with the aforesaid police personnel. He too claims to have assaulted the police officer who had injured his father. The accusation of taking away valuable



belongings from the house has also been alleged by one of the sons of Opposite Party No. 2. Similar statement has been made by the other witness who too is a son of Opposite Party No. 2.

Incidentally, it has been argued, both the sons of Opposite Party No. 2 were made accused in Rupaspur P. S. Case No. 204 of 2014, about which reference has been made earlier.

The learned counsel for the petitioners has submitted that petitioner no. 1 is an Advocate of this Court whereas the petitioner no. 2 is working in NIC and posted at Patna High Court.

This dispute is between the two neighbours which fact has been mentioned in the beginning of the complaint petition. It therefore appears that only because of the past dispute, this case has been lodged. It further appears from the records that other cases also have been filed between the parties which are pending adjudication before different Courts at different stages.



An effort was made by this Court in the past for getting the matter settled and resolved as the petitioner no. 1 as well as Opposite Party No. 2 are practicing Advocates of this Court and are neighbours also.

However, negotiations failed. Hence, all the matters including the present petition have been argued on merits.

In the aforesaid factual backdrop, it appears that the accusation has been levelled only to wreak vengeance because of the dispute which had arisen between the two neighbours.

Under Section 482 of the Code of Criminal Procedure, a provision has been made in the nature of savings of the inherent powers of the Court as a superior Court to make such orders which are necessary for preventing the abuse of the process of Court or to otherwise secure the ends of justice. Times without number, the position with respect to law relating to exercise of powers under Section 482 Cr.P.C. has been



clearly and cogently formulated and summed up. Broadly speaking, if the High Court is of the view that continuance of any litigation would only be an abuse of the process of the Court, it would be justified in preventing such abuse and exercising the powers under Section 482 of the Code of Criminal Procedure to quash such proceedings. This could also be resorted to in case the Court is of the view that ends of justice would be secured if such an order is passed.

The invocation of the aforesaid jurisdiction of the Courts to quash the proceedings at the initial stages on the ground that a settlement has been arrived at between the parties may be permissible under certain circumstances but it cannot be treated to be the same as the invocation of the jurisdiction for the purposes of compounding an offence which is governed by the provisions contained in Section 320 of the Code of Criminal Procedure.

This has been clarified by the Supreme Court in



order to lay at rest the controversy whether provision under Section 482 Cr.P.C. could be invoked even if the offences are non-compoundable.

While exercising such powers under Section 482 Cr.P.C., even though the matter has not fully been settled between the parties or relates to offences which are not compoundable, the Courts are required to give due regard to the nature and gravity of the offence.

In cases of heinous and serious offences involving offences against human body, this provision ought not be exercised normally.

If the offences which are absolutely private in nature, having no impact upon society, are brought to the notice of the Court and it is found that no useful purpose would be served in keeping the litigation of that kind pending, the invocation and exercise of the power under Section 482 Cr.P.C. would be justified. [Refer to: ***State of Haryana & Ors. Vs. Ch. Bhajan Lal & Ors.:AIR 1992 SC 604; Gian Singh Vs. State of Punjab & Anr.:***



(2012) 10 SCC 303; Narinder Singh & Ors. Vs. State of Punjab & Anr.:(2014) 6 SCC 46; State of Maharashtra Vs. Vikram Anantrai Doshi:(2014) 15 SCC 29; Central Bureau of Investigation Vs. Maninder Singh:(2016) 1 SCC 389; and State of Tamil Nadu Vs. R. Vasanthi Stanley & Ors.:(2016) 1 SCC 376].

In the present case, it is very clear that there was dispute between the petitioner no. 1 and Opposite Party No. 2 with regard to demarcation of their respective share in the land which they have purchased for constructing their houses. The dispute became very ugly and a criminal case also appears to have been lodged at the instance of a victim who is understood to be a person under the control of the petitioners. In that event, when an action was taken by the police against the sons of Opposite Party No. 2, the Opposite Party No. 2 doubted that the police force had entered the house of Opposite Party No. 2 only on the active assistance of the petitioners who are the neighbours of Opposite Party No. 2.



In this connection and background, the accusation in the complaint petition has been analyzed. The accusation in the complaint petition is therefore only on the basis of suspicion that the police resorted to the act of arresting the two sons of the Opposite Party No. 2 after going in collusion with the petitioners.

Such a suspicion, it has been urged, is without any foundation.

In order to lend credence to the aforesaid accusation, one of the witnesses during the enquiry has stated that the petitioners were seen fixing the grill of the window, indicating that they had facilitated the entry of the police personnel in the house of Opposite Party No. 2 by opening and removing the grill of the window, which oversaw the house of Opposite Party No. 2.

In this connection, it is also taken note of that initially the petitioners as well as Opposite Party No. 2 were agreeable for a settlement and considering their approach and stand at the relevant time, this Court had



made a request to a senior Advocate of this Court to provide his services for facilitating talks of settlement between the parties. However on some slender issue, the talks of settlement could not succeed.

The background facts of the case do convince this Court that any continuance of this proceeding would be an abuse of the process of the Court and it would be highly justified if the dispute between the parties is set at rest.

The accusation is absolutely private in nature and trivial, if looked at in a dispassionate manner and therefore allowing such proceedings to be continued any further would be giving fillip to the thought that the forum of criminal case could be used by parties for effecting revenge, as if such proceeding is only a play-thing for the contestants.

This ought not to be permitted.

This Court is conscious of the fact that there are several proceedings pending between the parties and



this Court intends to apply the same principle in such other cases also so that no party is left in a disadvantageous position.

Any dispute with respect to measurement of land and demarcation of the respective boundaries ought not to be the basis for any unnecessary litigation between the parties. Even if some of the offences in which cognizance has been taken is non-compoundable, but this Court deems it expedient to exercise its discretion under Section 482 of the Code of Criminal Procedure to quash such proceedings.

For the reasons afore-stated, the proceedings with respect to the petitioners in connection with Complaint Case No. 1265 (c) of 2014 is quashed. All further proceedings in this case, pursuant to the order of cognizance, also stand quashed.

The petition is allowed.

While passing this order, this Court has taken note of the contention of the petitioners which has been



brought on record by way of supplementary affidavit that petitioner no. 1, who had filed a case against the Opposite Party No. 2 and his family members *vide* Rupaspur P. S. Case No. 119 of 2014 dated 01.06.2014, shall not prosecute that case any further, provided complaint case No. 1265 (c) of 2014 and Complaint Case No. 1512 (c) of 2014 filed by the Opposite Party No. 2 and his sons respectively are not pursued any further.

It is expected that the parties shall jettison their differences and would file necessary applications before the court below seeking to withdraw such prosecution for their common good.

On the filing of such applications by the parties before the court below, the court below shall pass necessary orders in accordance with law which shall be in consonance with the spirit in which the present order of quashing of the prosecution has been passed.

The petition stands disposed off.



The Interlocutory Applications also stands
disposed off accordingly.

(Ashutosh Kumar, J)

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