

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.31733 of 2016

Arising Out of PS. Case No.-56 Year-2008 Thana- PATNA COMPLAINT CASE District-
Patna

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Ramdeo Prasad Son of Late Kush Prasad, resident of- Barhi Tola, Masaurhi,
Police Station- Masaurhi, District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ashwani Dattatrey, Block Development Officer-cum-Executive Officer,
Nagar Parishad, Masaurhi, Patna
3. Pankaj Kumar, Chairman, Municipal Corporation, Masaurhi, Patna
4. Shyam Nandan Singh, Head Assistant Municipality, Masaurhi, Patna
5. Bindhya Prasad, Assistant Municipality, Masaurhi, Patna
6. Sidhanath, Daily Wages Employee, Municipality, Masaurhi, Patna

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Rajnandan Kumar, Advocate
		Mr. Krishna Ranjan, Advocate
For the Opposite Party/s :		Mrs. Anuradha Singh, APP

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CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

3 20-09-2023 The present petition has been filed under Section 482

of the Cr. P.C. by the petitioner with a prayer to quash the order

dated 07.05.2016, passed by Ld. Additional Sessions Judge-X,

Patna in Criminal Revision No. 672 of 2010, whereby order

dated 26.06.2010, passed by Ld. Sub-Divisional Judicial

Magistrate, Masaurhi in Complaint Case No. 56C of 2008 has

been upheld.

2. The factual matrix of the case is that the petitioner

has preferred a criminal complaint bearing Complaint Case No.



56C of 2008 in the Court of Ld. Sub-Divisional Judicial Magistrate, Masaurhi alleging the offence punishable under Section 380 and 454 of the IPC against the co-accused persons, namely, (i) Aswani Dattatreya Thakare, Block Development Officer-cum-Executive Officer, Nagar Parishad, Masaurhi (Patna), (ii) Pankaj Kumar, Chairman, Municipal Council, Masaurhi (Patna), (iii) Shyam Nandan Singh, Head Assistant, Municipality, Masaurhi (Patna), (iv) Bindhya Prasad, Assistant, Municipality, Masaurhi, Patna and (v) Siddhanath, Daily Employee, Municipality, Masaurhi (Patna). As per the complaint, the complainant is a trustee of Shri Ram Janki Temple Thakurbari. It is alleged that Patna District Administration constructed a community hall over the land of the trust in question and handed over the same to the trust to look after its management. It is further alleged that at about 2 P.M. on 01.02.2008, all the accused persons along with the police force entered into the community hall without any prior information and broke the lock of the community hall and took away all the furniture, valuable documents of the trust and Rs. 50,500/- which was kept in Almirah. It is further alleged that accused persons neither informed the trustee nor bothered to take consent thereof and forcibly looted the articles and money



as alleged above.

3. Ld. SDJM, Masaurhi, at pre-cognizance stage, examined three complaint witnesses on S.A., namely, Lakhandev Prasad, Tulsi Prasad and Sahbir Prasad and after perusal of pre-summoning evidence of the complaint witnesses, the Court found that disputed community hall was constructed by the State Government out of its own fund in the year 1999 and the complainant has failed to file any document showing the title and possession of the community hall and as such, Ld. Magistrate held that the community hall was constructed by the State Government on *Gairmajarua* government land. It is also found by Ld. Magistrate that the claim of the complainant, that he was in possession of the community hall since 1982-83, is not reliable, because the community hall itself was constructed in the year 1999. There is also no documentary proof that the trust is registered with Hindu Religious Trust Board. Hence, the Court found that the accused persons being the Government officials were removing the encroachment from the community hall and hence he found that no criminal offence is made out against the accused persons and dismissed the complaint under Section 203 of the Cr. P.C. Thereafter, the petitioner preferred criminal revision bearing Criminal Revision No. 672 of 2010



before the Ld. Additional Sessions Judge-X, Patna and vide order dated 07.05.2016, the said criminal revision was dismissed upholding the order passed by Ld. S.D.J.M. Masaurhi. Hence, the present petition has been preferred by the petitioner under Section 482 of the Cr. P.C.

4. Heard both the parties at length and perused the material on record.

5. Ld. counsel for the petitioner submits that there was no proper enquiry or investigation by Ld. Magistrate and hence Ld. Magistrate has reached the erroneous conclusion and dismissed the complaint petition. He further submits that for the sake of the argument, even if it is presumed that the petitioner was encroacher or trespasser, he cannot be removed without following the procedure as prescribed under the Bihar Public Land Encroachment Act, 1956, whereunder notice to the trespasser or encroacher is *sine qua non* for evicting the trespassers from the public land. It is further submitted that though the petitioner has not filed any documentary proof in support of title or possession, but oral statement of the witnesses are there.

6. Ld. APP for the State submits that there is no infirmity or illegality in the impugned order requiring any



interference, because for the offences punishable under Sections 380 and 454 of the IPC, the complainant must have proof that he is in possession over the property in question, but as it transpires from the evidence adduced before the Ld. Magistrate at per-summoning stage, the complainant has not produced any document to show that the trust in question is registered with the Religious Trust Board and he has got the property from the Tekari Estate. He has also not filed any document to show that he was in possession of the community hall. As such Ld. Magistrate has rightly dismissed the complaint and Criminal revision petition respectively.

7. Considering the submissions advanced by Ld. Counsel for the parties as well as perusing the materials on record, this Court agrees with the submission of Ld. APP that offences punishable under Sections 380 and 454 of the IPC, the complainant must have legal identity and he must be in possession of the property in question. But in the present case, this Court finds that trust in question is not registered with the Hindu Religious Trust Board, nor any proof has been adduced before Ld. Magistrate showing that he has title to the property or at least, he is in possession of the property.

8. In view of the aforesaid facts and circumstances,



this Court finds no infirmity and illegality in the impugned order. As such, the present petition is dismissed, accordingly.

9. However, in regard to removal from the community hall without notice, the petitioner is at liberty to invoke civil remedy or any other remedy as available under the law.

(Jitendra Kumar, J)

Amrendra/-

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