

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.50787 of 2015**

Arising Out of PS. Case No.-265 Year-2014 Thana- MAJHAULIA District- West Champaran

1. Bhulai Raut, Son of Late Dukhi Raut
  2. Gopi Yadav, Son of Sri Chauki Yadav
  3. Manager Yadav, Son of Late Rekha Yadav
  4. Dhanjeet Yadav, Son of Late Jagdeo Yadav
  5. Munna Raut, Son of Sri Bhulai Raut
  6. Kishun Yadav, Son of Sri Manager Yadav,  
All resident of Khutia Indu P.S. Majhauria District- West Champaran
- ... .. Petitioners

Versus

1. The State of Bihar.
  2. Malik Pandey, Son of Late Pahwari Pandey, Resident of village- Khutiya Indu, P.S. Majhauria, District- West Champaran
- ... .. Opposite Parties

**Appearance :**

|                     |   |                                    |
|---------------------|---|------------------------------------|
| For the Petitioners | : | Mr. Bimlesh Kumar Pandey, Advocate |
| For the State       | : | Mr. Md. Fahimuddin, APP            |
| For the O.P. No. 2  | : | Mr. Anil Kumar, Advocate           |

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**  
**ORAL JUDGMENT**

**Date : 20-09-2023**

Heard learned counsel for the petitioners and Mr. Md.  
Fahimuddin, learned APP for the State.

**2.** The petitioners in the present case are seeking setting aside of the order dated 16.01.2015 passed by learned C.J.M., Bettiah, West Champaran in connection with Majhauria P.S. Case No. 265 of 2014 whereby and whereunder the learned C.J.M. has taken cognizance for the offences under Sections 147, 148, 341, 323, 417, 379, 420, 465, 468, 120(B) of the Indian Penal Code



against all the six accused persons and has ordered to issue summons against the petitioners.

3. As per the prosecution story, the informant Malik Pandey filed a complaint case bearing Complaint Case No. 1256 C of 2014 before the learned C.J.M. Bettiah, West Champaran stating therein that he has acquired land measuring area 08 katha and 13 dhur through sale deed dated 13.04.1977 from Pandit Gaya Pandey. It is alleged that under a conspiracy, the said land was sold by Bhulai Raut (petitioner no. 1) to Manager Yadav (petitioner no. 3) and Gopi Yadav (petitioner no. 2) on 06.11.2013 through two sale deeds. It is further alleged that on 02.07.2014 at about 04:00 P.M. all the accused persons armed with deadly weapons came to capture the said land and assaulted the informant. They also snatched Rs.270/- from the pocket of the informant.

4. Learned counsel for the petitioners submits that on a plain reading of the first information report itself which has been lodged after the learned Magistrate exercised his power under Section 156(3) Cr.P.C. it would appear that the dispute between the parties is a purely civil dispute which has been tried to be given a color of criminal proceeding.

5. Learned counsel submits that the disputed land is recorded in the name of one Ramkhelawan who is the grandfather



of the petitioner Bhulai Raut, Son of Late Dukhi Raut. The petitioner no. 1, Bhulai Raut sold this piece of land as owner of the property to the petitioner Gopi Yadav and Manager Yadav and on the sale deeds the petitioners, namely, Dhanjeet Yadav and Munna Raut have signed as witness. It is submitted that the informant is also claiming his right over the land in question and now a title suit bearing title suit no. 377 of 2014 is pending in the court of learned Sub-Judge, 1<sup>st</sup>, Bettiah, West Champaran.

6. Learned counsel submits that the suit has been brought by the informant Malik Pandey and the petitioner nos. 1, 2 and 3 are the defendants in the said suit. Referring to the plaint of the title suit which has been brought on record as Annexure '2', learned counsel submits that in the suit the plaintiffs are seeking a declaration of their title and possessions over the disputed piece of land as mentioned in Schedule I of the plaint. It is submitted that the defendants in the said suit have already appeared and filed their written statements in which the defendants are contesting the claim of the informant in the land in question. In paragraph '22' of the written statement, it is specifically stated that the plaintiffs were neither then nor now in possession of the land and it is the defendant first party who are coming in possession of the property and prior to them the vendor of the defendants were in possession.



The submission is that the allegations made in the FIR that these petitioners were indulged in taking forceful possession of the land are being keenly contested by the parties in the civil suit.

7. Referring to the judgment of the Hon'ble Apex Court in the case of **Inder Mohan Goswami and Another Vs. State of Uttranchal and Others** reported in **(2007) 12 SCC 1**, learned counsel submits that this is one of the cases in which a purely civil dispute has been converted into a criminal proceeding. According to him, continuation of the present case would only be an abuse of the process of court.

8. Learned counsel has also relied upon the judgment of the Hon'ble Supreme Court in the case of **Priyanka Srivastava Vs. State of Uttar Pradesh and Others** reported in **(2015) 6 SCC 287** to submit that prior to invoking his power under Section 156(3) Cr.P.C., the learned Magistrate had not looked into the mandatory compliances with the provisions of Section 154(1) and 154(3) Cr.P.C., thus, the very exercise of power under Section 156(3) Cr.P.C. is in the teeth of the judgment of the Hon'ble Supreme Court.

9. Mr. Anil Kumar, learned counsel for the opposite party no. 2 has opposed this application.



**10.** Mr. Md. Fahimuddin, learned APP for the State is present and opposed this application saying that in this case, the police has already submitted his chargesheet and cognizance has been taken, hence, no interference is required.

**11.** Having heard learned counsel for the petitioner and the State as also on perusal of the records, this Court finds that the first information report is itself disclosing that there is a land dispute between the parties as both the parties are claiming their right title and possession over the land in question. At this stage, the allegation of the informant is that the land which belonged to him has been sold by the petitioner no. 1 in favour of petitioner nos. 2 and 3. This is being keenly contested in the pending title suit since the year 2014.

**12.** This Court finds that the submission of learned counsel for the petitioners on the strength of the judgment of the Hon'ble Supreme Court in the case of **Priyanka Srivastava** (Supra) is worth acceptable. Paragraphs '30' and '31' of the judgment in the case of **Priyanka Srivastava (Supra)** are being quoted hereunder for a ready reference:-

“**30.** In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate.



That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.

**31.** We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being



had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in *Lalita Kumari* [(2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.”

**13.** In this case, on perusal of the complaint petition which was presented before the learned Magistrate, it appears that there is no averment showing compliances with the provisions of Section 154(1) Cr.P.C. and 154(3) Cr.P.C. This being the position, the present case would be covered by the judgment of the Hon’ble Apex Court in the case of **Priyanka Srivastava**.

**14.** Finding that the allegations as disclosed in the first information report are in the nature of a purely civil dispute, this Court is of the same opinion as that of the views expressed by the Hon’ble Supreme Court in the case of **Inder Mohan Goswami and Another (Supra)**. Paragraph ‘30’ of the said judgment is being reproduced hereunder for a ready reference:-

“**30.** The Court noticed that the tendency of perjury is very much on the increase. Unless the courts come down heavily upon such persons, the whole judicial process would come to ridicule. The Court also observed that



chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court.”

**15.** This Court having further noticed that the impugned order taking cognizance and issuance of summons have been passed in a routine and mechanical manner, hereby sets aside the impugned order and would quash the complaint as regards the petitioners.

**16.** This application is allowed.

**(Rajeev Ranjan Prasad, J)**

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