

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1565 of 2022

Arising Out of PS. Case No.-119 Year-2022 Thana- MOKAMAH District- Patna

NITIN KUMAR SINGH @ NITISH KUMAR SINGH S/O Dr. Ashok Kumar Sinha R/O Moldiyar Tola, Ward No- 10, Post Office and Police Station- Mokama, District- Patna at present Resident of A/3, Madhav Apartment, Hirapur, Dhanbad- 826001

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Government of Bihar, Patna Bihar
2. The Director General of Police, Patna, Bihar Bihar
3. The Circle Officer, Circle Office, Mokama, District- Patna Bihar
4. The Officer in Charge, Police Station- Mokama, District- Patna Bihar
5. Surender Kumar S/O Late Nageshwar Singh R/O Village- Moldiyar Tola, Ward No-10, P.S- Mokama, District- Patna

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Karandeep Kumar, Adv.

For the Respondent/s : Dr. Mankeshwar Tiwari, AC to AAG-3

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT

3. **06-07-2023**

Heard the parties.

2. The present writ application has has been filed for quashing of the FIR as well as entire prosecution against the petitioner and his brother in connection with Mokama PS Case No. 119 of 2022 registered on 30.04.2022 for the offence punishable under Sections 341, 323, 504/34 of the IPC.

3. The case of the petitioner is that his ancestors were *Khatiyani Raiyats* of the land appertaining to Khata No. 742, Plot No. 4004 and 4005 situated at Mauja Mokama Khas,



Thana No. 30, Patna. The rent receipts have been issued in favour of the petitioner but the dispute arose when the neighbours of the petitioner, Gopal Krishna constructed a *Chhajja*/extension over the petitioner's land and also encroached half of the common road which is in between the two plots by constructing kitchen/bathroom, affecting the easementary rights of the petitioner. The petitioner complained about the same to the Chief Executive Officer, C.O. and Nagar Parishad. He further stated that in an enquiry conducted by the C.O., it was found that the private respondent no. 5 has encroached up to 52 Sq Ft. of petitioner's land. A proceeding under Section 144 CrPC was initiated in which learned SDO has passed the order on 02.05.2022 for maintaining the peace and tranquility in the locality.

4. Respondent No. 5/informant has lodged an impugned FIR stating *inter alia* that he is the *Raiyati* owner of a piece of land having Khata No. 458, Plot No. 5676 having an area of 03 decimals and after partition amongst the co-shareres 01 decimal of land came to the share of the informant. On 29.04.2022 in the evening, while the informant was renovating/constructing his boundary wall on the aforesaid land, the petitioner and his brother restrained/prevented the



construction work being done by the informant, abused him and pushed/knocked him. When the wife of the informant intervened, she was also abused and the petitioner and his brother pushed her down on the heap of bricks, due to which, she sustained injury on her hand. When younger son of the informant protested, he was also abused and pushed down on the heap of bricks due to which he also sustained injury and bruises in his hand.

5. Learned counsel for the petitioner submits that he lodged an FIR bearing Mokama PS Case No. 115/2022 on 29.04.2022 against the brothers of Respondent No. 5 and his family members alleging therein that the accused persons abused him, started demolishing his 50 years old boundary wall and upon protest being made by the petitioner, they abused and pushed him and claimed their share in the land. It has further been alleged that on the threat of life they started breaking the boundary wall and ultimately demolished the boundary wall of the petitioner. The FIR has been lodged under Sections 341, 323, 427, 504, 50/34 of the IPC.

6. Accordingly, his submission is that the impugned FIR has been lodged as a counter blast to the FIR lodged by the petitioner bearing Mokama PS Case No. 115/2022



dated 29.04.2022. He further submits that the FIR in question arises out of the land dispute which is purely civil in nature and the same has been given colour of criminal offence. He further submits that the impugned FIR does not fulfill the essential ingredients of the offences levelled and only bald allegation has been made against the petitioner and his brother.

7. I have heard learned counsel for the petitioner and the State.

8. From bare perusal of the FIR, it appears that it, *prima facie*, discloses the cognizable offence. As per the allegations made in the FIR, the petitioner and his brother wrongfully obstructed and prevented Respondent No.5 and his family members in constructing the boundary wall, pushed them back on the heap of the bricks and also abused them.

9. It is true that there is a case and counter case between the parties and both the parties have alleged wrongful restraint causing hurt, abusing and insulting with an intent against each other but mere fact that after the petitioner lodged an FIR and subsequent thereof, the impugned FIR has been lodged by Respondent No. 5 cannot be said to be a ground for quashing of the FIR. Whether the FIR lodged by Respondent No.5 is a counter blast to the FIR lodged by the petitioner is a



matter of investigation and the real fact can only be ascertained after investigation. Quashing of the FIR on this very ground and the same having been lodged as a counter blast, in my opinion, is not permissible in law. The petitioner has failed to point out any other legal grounds for quashing of the FIR warranting interference by this Court under extraordinary writ jurisdiction.

10. In the result, the present application stands dismissed.

(Anil Kumar Sinha, J)

perwez

AFR/NAFR	AFR
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