

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.31484 of 2017

Arising Out of PS. Case No.-27 Year-2015 Thana- SAMASTIPUR COMPLAINT CASE
District- Samastipur

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1. Sidheshwar Prasad Singh @ Dadu Babu @ Dadu Singh And Ors Son of Late Kameshwar Singh,
 2. Mukteshwar Singh @ Basant Kumar Singh, @ Basant Singh, Son of Late Laliteshwar Prasad Singh @ Late Laliteshwar Singh,
 3. Amneshwar Singh @ Chotu Singh @ Chotu, Son of Sidheshwar Prasad Singh @ Sri Sidheshwar Singh,
 4. Rishav Singh @ Kiss Kumar, @ Kiss Kumar Singh, Son of Bivuteshwar Singh, All Resident of Village- Bangarhatta, P.S.- Singhiya, District- Samastipur.

... .. Petitioner/s

Versus

1. State of Bihar
2. Mohan Kabi, Son of Late Badari Kabi, Resident of Village- Shreepur Muhan, P.S.- Singhiya, District- Samastipur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Purushotam Sharma, Advocate
	:	Mr. Ravi Prakash, Advocate
For the Opposite Party/s	:	Smt. Sangeeta Sharma, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 27-06-2024

Heard learned counsel for the petitioners
and learned counsel for the respondent.

2. The present quashing petition has been
preferred to quash the order dated 07.04.2015 passed
in Complaint Case No. 27 of 2015, where learned Sub-
Divisional Judicial Magistrate, Rosera-Samastipur, took



cognizance for the offence punishable under Sections 323, 342, 384 & 386 of the Indian Penal Code and Section 27 of the Arms Act against the petitioners.

3. Despite proper service of notice opposite party No. 2, fails to join the present court proceedings.

4. From the crux of complaint petition it appears that complainant and other witnesses of the present complaint purchased more than 12 bigha land from Chandresekhar Prasad Singh, Nageshwar Prasad Singh, Jyotish Kumar Singh, Prakash Kumar Singh and Bikash Kumar Singh on 19.12.2014, where complainant purchased 10 katha of land. It is alleged that on 05.01.2015 around 10:00 AM all accused persons came with their illegal weapon on the alleged land purchased by complainant. It is further alleged that they all surrounded the complainant at the mention of land and demanded Rs. 50,000/- of levy and threatened that they will not allow complainant to cultivate the aforesaid land



and kept complainant as hostage for some hours with them. Petitioners fired some bullet in the air as to threaten complainant and thereafter Sidheshwar Prasad Singh forcefully took Rs. 12,000/- from the pocket of the complainant.

5. It is submitted by learned counsel appearing for the petitioners that dispute between parties is civil in nature arising out of land dispute, where due to ulterior and oblique motive just to pressurize the petitioners present criminal proceeding was initiated against above named petitioners. It is further submitted that 12 bighas of land, which was alleged to be purchased by complainant from Chandresekhar Prasad Singh, Nageshwar Prasad Singh, Jyotish Kumar Singh, Prakash Kumar Singh and Bikash Kumar Singh vide sale deed dated 19.12.2014 was made during the pendency of Title Suit No. 198 of 2014 brought by petitioners, which is still pending before learned Sub-Judge 2nd, Rosera-Samastipur. It is



submitted that immediately after purchasing the disputed piece of land from the aforesaid defendants of title suit no. 198 of 2014, complainant filed present complaint case on 13.01.2015 as retaliatory measures to check petitioners to proceed with same in civil side.

6. While travelling over the argument learned counsel submitted that in view of aforesaid, present criminal proceeding is nothing but a malicious prosecution out of ulterior and oblique motive and for the said reason alone, present criminal proceeding is liable to be quashed and set aside. In support of the submissions learned counsel referred the legal report of Hon'ble Supreme Court, as reported in the matter of **Usha Chakraborty and Another Vs. State of West Bengal and Another** as reported in **(2023) SCC Online SC 90**.

7. Learned APP appearing for the State, opposes the application.

8. It would be apposite to reproduce the



paragraph no(s). 6, 7, 8 and 9 as reported through
Usha Chakraborty case (supra), which reads as
under:

6. In *Paramjeet Batra v. State of Uttarakhand*, this Court held:—

"12. While exercising its jurisdiction under Section 482 of the Code of the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of the facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to



prevent abuse of process of the court.”

7. In *Vesa Holdings Private Limited v. State of Kerala*, it was held that:—

“13. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC. In our view the complaint does not disclose any criminal offence at all. The criminal proceedings should not be encouraged when it is found to be mala fide or otherwise an abuse of the process of the court. The superior courts while exercising this power should also strive to serve the ends of justice. In our opinion in view of these facts allowing the police



investigation to continue would amount to an abuse of the process of the court and the High Court committed an error in refusing to exercise the power under Section 482 of the Criminal Procedure Code to quash the proceedings.”

8. In *Kapil Aggarwal v. Sanjay Sharma*, this Court held that Section 482 is designed to achieve the purpose of ensuring that criminal proceedings are not permitted to generate into weapons of harassment.

9. In the decision in *State of Haryana v. Bhajan Lal*, a two Judge Bench of this Court considered the statutory provisions as also the earlier decisions and held as under:—

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by



police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings



and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

9. In view of aforesaid factual and legal discussions, it appears from the complaint case, which is the basis of present criminal proceeding as filed by O.P. No. 2 land dispute is the core issue, for which petitioners already brought title suit bearing no. 198 of 2014 against the vendors of the complainant. It appears that during the pendency of aforesaid Title Suit bearing No. 198 of 2014 land was purchased by complainant and immediately thereafter within few months present criminal case was lodged. It appears that present prosecution is nothing but a dispute of civil nature, which



was given cloak of criminal offence.

10. Accordingly, by taking guiding note of **Usha Chakraborty Case (supra)**, impugned order of cognizance dated 07.04.2015 with all its consequential proceedings, *qua*, all above named petitioners arising thereof as passed in Complaint Case No. 27 of 2015, pending before learned Sub-Divisional Judicial Magistrate, Rosera-Samastipur is hereby quashed and set aside.

11. Hence, this application stands allowed.

12. TCR (Trial Court Records), if any, be returned to the learned Trial Court alongwith the copy of this judgment.

(Chandra Shekhar Jha, J.)

S.Tripathi/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	29.06.2024
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