

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.30648 of 2023**

Arising Out of PS. Case No.-245 Year-2022 Thana- SITAMARHI COMPLAINT CASE
District- Sitamarhi

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Jitendra Kumar Son Of Late Kapildeo Narayan Singh R/O-Kishanpur
(kishunpur), P.S.-BATHNAHA, DISTT.-SITAMARHI

... .. Petitioner/s

Versus

1. The State of Bihar
2. KAUSHLENDRA KUMAR SON OF LATE DEVENDRA RAM R/O-
BAKHRI, P.O.-JOGWANA, P.S.-BATHNAHA, DISTT.-SITAMARHI, PIN-
843322

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Nachiketa Jha, Advocate

For the Opposite Party/s : Mr.Satya Nand Shukla, Addl Public Prosecutor

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

5 15-04-2024 Heard learned counsel for the petitioner and the State.

Nobody appears for opposite party no.2 inspite of valid service
of notice.

2. This application has been filed for quashing order
dated 18.5.2022 passed in Trial No. 1067 of 2022/ Complaint
Case No. 245 of 2022, whereby and whereunder cognizance has
been taken against the petitioner for offence punishable under
sections 406/420 of the I.P.C.

3. Opposite party no.2 filed a Complaint Case before
Learned A. C. J. M. VII, Civil Court Sitamarhi on 11.03.2022,
alleging that he negotiated with the petitioner to sell out his land
bearing Khata NO:-108, Khesra No:-329, Area:-32 Dic., Khesra



No:-330, Area 52 Dic.. Khesra No:-331, Area 12 Dic., Khesra No:-332, Area 10 Dic., Khesra No:-333, Area 42 Dic., and Khesra No:-334, Area 29 Dic., total area 1 Aca 77 Dic., which was in his possession, for Rs. 13 lakhs 20 thousand. Thereafter petitioner handed over Rs. 10 lakhs to opposite party no.2 and for that an agreement was executed on 31.03.2015 on Rs. 20/- of Stamp paper before the two witnesses. Opposite party no.2 however, requested the petitioner several times to get executed the above mentioned land but he did not pay hid on his request. One day, when opposite party no.2 went to his land to plough it, Raju Kumar Singh and Sunil Kumar Singh objected him. They told that the land was purchased by them on 26.02.2021 & 08.03.2021 respectively. They threatened opposite party no.2 of dire consequence. Thereafter, opposite party no.2 went to the petitioner and told him about the occurrence who abused and assaulted opposite party no.2. After examination of three witnesses in support of the case of complainant, the learned A. C. J. M.-VII, Sitamarhi, took cognizance of the offence on 18.05.2022 against the petitioner Under Section 406 and 420 of the Indian Penal Code.

4. It is submitted by learned counsel for the petitioner that the petitioner is innocent and has been falsely implicated in



the present case, on account of land dispute. On perusal of the statements of enquiry witnesses, it would appear that they have given contradictory statements and the same do not support the prosecution story. All the enquiry witnesses are the villagers of the Complainant who are hand-in-gloves with the complainant. On perusal of the statements, it would appear that on the alleged date of negotiation, Rs. 10 lakhs was handed over to the petitioner at the door of the complainant, which is unbelievable as no one can keep such huge amount in cash. Learned counsel submits that the whole story of the Complaint is forged and concocted, plan hatched by the complainant along with the enquiry witnesses only to usurp his land mentioned in the complaint petition which is situated in the village of the complainant, Complainant is the Hunda bataidar of the said land which is his ancestral property and after knowing about sell of the land, the complainant made a forged document of agreement with his signature. He also submits that the agreement is before the notary on the Stamp Paper of Rs. 20/- (Rs. Twenty only) which is not registered as such the same has no validity in the eye of law. He submits that the present case is purely civil in nature and lodged only with a view to harass and humiliate the petitioner and, as such, no case under Section 420 of the IPC is



made out against the petitioner. Present criminal proceeding has been initiated with an ulterior motive for wreaking vengeance on petitioner due to land dispute and, as such, continuation of criminal proceeding would amount to abuse of the process of court and as such the order of cognizance is bad in law and the present petition is fit to be quashed. In this regard, learned counsel for the petitioner has placed reliance on a decision of the Hon'ble Supreme Court in case of **Joseph Salvaraj Vs. State of Gujarat and Ors.** reported in **2011 SCC online SC 871.**

5. On the other hand, learned Addl. P. P. for the State has opposed the arguments advanced on behalf of the petitioner and submits that petitioner is named in the complaint. It is further stated that when complainant come to know about the misconduct of the petitioner, he opposed the same but petitioner abused and also assaulted him, as such, there are sufficient materials available to take cognizance against the petitioner and no interference is warranted by this Court at this stage.

6. Having taken into consideration all the materials available on record and after hearing learned counsel for the parties, I am satisfied that the criminal proceeding initiated by the opposite party no.2 against the petitioner is wholly



unwarranted. Complaint is an abuse of the process of Court and proceedings are liable to be quashed in lieu of the averments made in the Complaint are taken to be correct, yet the case for prosecution order under Sections 420 and 323 of I.P.C is not made out. Opposite party no.2 does not make any averment so as to infer any fraudulent or dishonest intention of the petitioner from the inception of transaction. Parties have land dispute and it can be said that a criminal colour has been given to a civil matured case.

7. Accordingly, the quashing application is allowed and order dated 18.5.2022, passed in Trial No. 1067 of 2022/Complaint Case No. 245/2022 stands quashed with respect to the petitioner only.

(Prabhat Kumar Singh, J)

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