

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 12207 of 2016

Arising Out of PS. Case No.-92 Year-2011 Thana- HISUWA District- Nawada

Radhe Prasad Son of Late Bhagwat Ram, Resident of Mohalla- Kali Sthan,
Hisua P.S- Hisua, District- Nawada.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Deepak Kumar, Adv.
For the State : Mr. J.Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

14 09-08-2024

The present petition has been preferred by the petitioner under Section 482 Cr. PC against the impugned order dated 19.01.2012 passed by Ld. Chief Judicial Magistrate, Nawada in connection with Hisua P.S. Case no. 92 of 2011, corresponding to G.R. no. 1410 of 2011 whereby the Ld. Magistrate has taken cognizance of the offence punishable under Section 379 of the Indian Penal Code and Sections ¾ of the Forest Act against the sole accused who is petitioner herein.

2. The Criminal proceeding has been initiated on the basis of written report of Circle Officer, Hisua (Nawada) bearing Memo No. 387 dated 10.06.2011 addressed to the Officer-in-Charge of Police Station Hisua (Nawada) as per which the case of the prosecution is that one Gullar Tree and one green Mango tree were standing on the government land which was felled



down by some unknown persons. The timber was lying on the place of occurrence. Inspection was done by the informant and inquiry report was sought from the Revenue Officer and the police was requested to lodge the FIR.

3. In pursuance of the written report, Hisua P.S. Case no. 92 of 2011 was lodged on 12.06.2011 under Section 379 of the Indian Penal Code against unknown. Subsequent to lodging of the First Information Report, the investigation commenced and after completion of the investigation, charge sheet bearing No. 204 of 2011 dated 13.12.2011 was filed by the Police against the sole accused who is petitioner herein for the offence punishable under Section 379 of the Indian Penal Code and Sections 3/4 of the Forest Act. Subsequently, the Ld. Magistrate has passed the impugned order taking cognizance of the offence against the petitioner.

4. Heard learned counsel for the petitioner and Ld. APP for the State.

5. Ld. Counsel for the petitioner submits that the petitioner is innocent and has falsely been implicated in this case. He further submits that as per the case diary some witnesses have alleged that the petitioner had felled down Gullar and mango trees, two in numbers, and hence, charge



sheet was submitted against him. However, Ld. Counsel for the petitioner submits that it is the petitioner who had informed the informant, Circle Officer, regarding the felling of the tree by co-villager Shri Surendra Singh *vide* written information which was received in the office of the informant on 08.06.2021. This written information has been filed as Annexure 2 by the petitioner and, thereafter, the Circle Officer had come into action in regard to felling of the trees. Subsequently, the timber was auctioned and petitioner purchased the timber of these two trees in auction on 05.08.2011. He has filed receipt of the payment made by the petitioner to State Treasury Office for purchase of one mango tree and one Gullar tree for Rs.15,100/- (fifteen thousand one hundred rupee). Hence, it is not surprising that these two trees were seized from the house of the petitioner on 01.12.2011. The same was purchased by the Petitioner in auction about 4 months back on 5.8.2011.

6. As such, it is submitted that no *prima facie* case is made out against the petitioner and the impugned order is misuse of the process of the Court whereby the Magistrate has taken cognizance against the petitioner.

7. Learned counsel for the Petitioner refers to **State of Haryana Vs. Bhajan Lal [1992 Suppl (1) SCC 335]**, wherein



Hon'ble Supreme Court has, amongst other things held that if as per the allegation, no *prima facie* case is made out, the Court can invoke the jurisdiction under Section 482 Cr. PC to prevent the abuse of the process of Court and secure the ends of justice.

8. *Per contra*, learned Additional Public Prosecutor for the State, however, defended the impugned order submitting that there is no illegality or infirmity in the impugned order.

9. I perused the material on record and considered the submissions of the parties.

10. I find that it is the Petitioner who had given information regarding felling of the trees in question to the informant, Circle Officer, and the Petitioner had purchased the timber of the felled trees in auction and naturally, the timber was seized from his house because before the seizure, he had purchased the timber in auction.

11. Considering the aforesaid facts and circumstances, I find that no *prima facie* offence is made out as per the alleged facts and circumstances. The impugned order is not sustainable in the eye of law. It is an abuse of the process of the Court and, hence, liable to be quashed and set aside under Section 482 Cr.PC in view of the ratio of ***Bhajan Lal case*** (supra).

12. Accordingly, the present petition is allowed



quashing and setting aside the impugned order dated 19.01.2012 passed by Ld. Chief Judicial Magistrate Nawada in connection with Hisua P.S. Case No. 92 of 2011, G.R. No. 1410 of 2011.

Ramesh/S. Ali-

(Jitendra Kumar, J.)

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