

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.44187 of 2015

Arising Out of PS. Case No.-726 Year-2014 Thana- JEHANABAD COMPLAINT CASE
District- Jehanabad

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1. Praduman Singh Son Of Late Sewan Singh
 2. Sarwehswar Kumar @ Sarweshwar Kumar Singh Son of Sri Ramdeo Singh
 3. Vishweshwar Kumar @ Vishweshwar Kumar Singh Son of Sri Ramdeo Singh
 4. Upendra Kumar Singh @ Upendra Prasad Singh Son of Late Laldeo Singh
 5. Shishir Kumar Singh @ Kumar Shishir Son of Sri Rajendra Singh
 6. Sidhnath Singh, Son of Late Kameshwar Singh
 7. Satish Kumar @ Satish Kumar Singh Son of Sri Sidhnath Singh
- All are resident of Village-Mainpura, P.S.- Kaler, Distt- Arwal

... .. Petitioners

Versus

1. The State of Bihar
2. Nalin Kumar Singh, Son of Late Bachcha Singh, Resident of Village-Mainpura, P.S.- Kaler, Distt- Arwal

... .. Opposite Parties

Appearance :

For the Petitioner/s : Mr. Deepak Kumar, Advocate
For the Opposite Party/s : Mr. Arbind Kumar Pandey, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 28-02-2024

Heard learned counsel appearing on behalf of the petitioners and learned APP appearing on behalf of the State as well as learned counsel appearing on behalf of opposite party no.2

2. The present application has been filed by the petitioners under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') against the order taking cognizance dated



19.05.2015 passed by learned Judicial Magistrate-1st Class, Jehanabad in Complaint Case No.726 of 2014 whereby the learned Magistrate has taken cognizance against the petitioners for the offence punishable under Sections 147, 448, 427 and 504 of the Indian Penal Code (for short 'IPC') and summoned them to face trial.

3. The case of the prosecution, in brief, is that on 10.08.2014 at 8.00 am when the complainant/opposite party no.2 have gone to his land situated at Jivanarayan Singh and Novlakh Singh's Ahari along with his brother, nephew and son, all accused persons were alleged to have reached there and they were variously armed with *lathi*, *garasa* and gun and accused/petitioner no.3 said to have told to leave the land otherwise every body would be killed. On being protested by complainant/opposite party no.2, the petitioners have ordered to assault the complainant as well as to plough the field. In the meantime, the petitioner Shishir Kumar is said to have made firing from the gun. Thereafter, the opposite party no.2 fled away from the spot and hide himself by the side of the tree and saw that all the accused persons by means of spade removed the eastern demarcation of plot no.1671 and ploughed the field by tractor. It is also alleged that all the petitioners were allegedly



abusing and saying that they would commit loot in the house later. Thereafter, the complainant went to Kaler Police Station to lodge the FIR but, no case was registered as the police was in collusion with the petitioners/accused persons.

4. Notice was issued to opposite party no.2, who is duly represented.

5. It is submitted by learned counsel for the petitioners that no offence under Sections 147, 448, 427 and 504 of the IPC appears to be made *prima facie* against the petitioners. It is submitted that the allegation as raised through complaint petition is purely regarding civil dispute and same is also not constituting *prima-facie* any criminal offence. At best, the opposite party no.2 may raise such issues before appropriate court of civil jurisdiction. It is further submitted that partition has already completed between the parties, but certain civil litigations are still pending.

6. *Per contra*, learned counsel appearing on behalf of opposite party no.2 submitted that the petitioners came to the land of opposite party no.2 on the time and date of occurrence and damaged the partition line, causing damage of more than Rs.5,000/-

7. It is the settled position of law that any effort to



settle the disputes and claims, which do not involve any criminal offence by applying legal pressure out of criminal proceedings would not be accepted. In several cases, the Hon'ble Apex Court held that in such nature of cases it would be just and proper to exercise the power as available under Section 482 of the Cr.PC.

8. In this context, it would be apposite to refer the legal report of Hon'ble Supreme Court in the case of **M/s. Indian Oil Corporation vs. M/s. NEPC India Ltd. and Ors. [(2006) 6 SCC 736]** as under:-

“It is a trite law that any effort to settle civil disputes and claims, which do not involved any criminal offence by applying pressure through criminal prosecution, should be deprecated and nipped in the bud. It would be just and legal for the High Court to exercise the power under Section 482 of the Code of Criminal Procedure, if the FIR or complaint, if taken at their face value and accepted in its entirety, do not constitute any offence or makes out a case against the accused and if such allegations do not disclose a cognizable offence”.

9. It would be further appropriate to refer the legal report of Hon'ble Supreme Court in the case of **Joseph Salvaraja A. vs. State of Gujarat and Others [(2011) 3 SCC (Cri.) 23]** which is as under:-



“ In our opinion, the matter appears to be purely civil in nature. There appears to be no cheating or a dishonest inducement for the delivery of property or breach of trust by the appellant. The present FIR is an abuse of process of law. The purely civil dispute, is sought to be given a colour of a criminal offence to wreak vengeance against the appellant. It does not meet the strict standard of proof required to sustain a criminal accusation. In such type of cases, it is necessary to draw a distinction between civil wrong and criminal wrong as has been succinctly held by this Court in *Devendra vs. State of U.P.* [(2009) 7 SCC 495], in which, it was held (para-27) that a distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out.”

10. It would also apposite to refer paragraph-102 of the legal report of Hon'ble Supreme Court passed in the case of **State of Haryana vs. Bhajan Lal [1992 Supp. (1) SCC 335]** which is as under:-

“**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the



process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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.

XXXXX

(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.

XXXXX

(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.”

11. For the reasons as stated above, it appears that present complaint case was lodged only to harass the petitioners in the background of civil dispute, which cannot be permitted under the settled principle of law. The fact of case did not support *prima facie* legal ingredients as to constitute the alleged offence for which the cognizance has been taken by learned Jurisdictional Magistrate. Face of complaint did not suggest any house trespass, which also did not suggest that partition line of field was created on cost paid by opposite party no. 2.

12. Accordingly, the order taking cognizance dated 19.05.2015 passed by learned Judicial Magistrate-1st Class,



Jehanabad in Complaint Case No.726 of 2014 is, hereby, quashed and set aside with all its consequential proceedings *qua* petitioners.

13. Hence, application stands allowed.

14. Let a copy of the order be communicated to the learned Trial Court.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	04.03.2024
Transmission Date	04.03.2024

