

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.14762 of 2024**

Arising Out of PS. Case No.-358 Year-2018 Thana- DIGHA District- Patna

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Amitesh Singh @ Kumar Amitesh Anand S/O ARUN KUMAR SINGH
RESIDENT OF RAMJI CHAK, DIGHA, PS.- DIGHA,DIST. PATNA.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rajiv Kumar Singh, Sr. Advocate

Ms. Taniya Kumari, Advocate

For the Opposite Party/s : Mr. Raj Ballabh Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT**

Date : 01-09-2025

Heard Mr. Rajiv Kumar Singh, learned Senior
counsel along with Ms. Taniya Kumari, learned counsel
appearing on behalf of the petitioner and Mr. Raj Ballabh Singh,
learned APP for the State.

2. The present application has been filed for quashing
the order dated 28.03.2019 passed by learned Sub-Divisional
Judicial Magistrate, Patna in connection with Digha P.S. Case
No.358 of 2018, by which cognizance of the offences has been
taken under Sections 341, 323, 427, 504, 506 and 34 of the
Indian Penal Code against the petitioner and others.



3. Mr. Rajiv Kumar Singh, learned Senior counsel along with Ms. Taniya Kumari, learned counsel appearing on behalf of the petitioner submitted that the land bearing Khata No.1643/1656, Khesra No.981 measuring an area of about 12 katha in Village – Digha is the ancestral property of the petitioner and the aforesaid land is recorded in the name of the ancestors of the petitioner, namely, Raj Dulari Devi, Dev Kunwar Devi and Shyam Kunwar. The allegation against the petitioner is that he had demanded extortion money from the informant, who has alleged that he has purchased 2.5 katha of land in name of his wife through power of attorney from Hari Narayan Singh and Raj Dulari Devi. The records reveal that the informant, way back in the year 2011 in respect of the land in question, had filed Title Suit No.377 of 2011, in which he had accepted that the said property is in the names of Raj Dulari Devi, Dev Kunwar Devi and Shyam Kunwar, who are ancestors of the petitioner, and their names have also been recorded in continuous Register 2/*Khatian*. He further submitted that though the learned Sub-Divisional Judicial Magistrate, Patna has taken cognizance on the basis of charge-sheet submitted under Sections 341, 323, 427, 504, 506 and 34 of the Indian Penal Code but considering the allegation made in the FIR and



the dispute being purely civil in nature, no ingredients under the aforesaid sections is made out against the petitioner and as such, further continuation of the said criminal proceeding shall result into abuse of Court of law. Learned counsel in this regard has relied upon the judgments of the Apex Court passed in the case of **Govind Prasad Kejriwal Vs. State of Bihar & Anr.** reported in **2013 SCC 714**, in case of *Paramjeet Batra v. State of Uttarakhand, (2013) 11 SCC 673* and in case of *Usha Chakraborty v. State of West Bengal, (2023) 15 SCC 135*.

4. Learned counsel appearing on behalf of State submitted that no doubt criminal proceeding and civil proceeding can go side by side but the present case is not the case where it can be said that it is purely civil in nature rather elements of Sections 323, 341, 323, 427, 504, 506, 34 of Indian Penal Code are made out against the petitioner. The order taking cognizance has been passed after proper application of judicial mind based on the materials which were collected in course of the investigation against the petitioner.

5. Having considered the rival submissions made on behalf of the parties, as well as, having perused the allegations made in the FIR and the order dated 28.03.2019 taking cognizance against the petitioner and others, it appears that the



learned Sub-Divisional Judicial Magistrate has not taken into consideration the very fact that the petitioner is in possession of the property. The allegation against him that he has extorted money from the informant is based on no evidence. In such circumstances whether prosecution fails and the order taking cognizance becomes unsustainable in the eye of law?

6. It is well settled principal that the proposition of law in criminal prosecution, the “*mens rea*” is required to be seen. Recently, the apex court in the case of **Jayedeeptsinh Pravinsinh Chavda and Others v. State of Gujarat**, reported in , **2024 SCC OnLine SC 3679** held that the element of mens rea cannot simply be presumed or inferred, instead it must be evident and explicitly discernible.

7. I also find it apt to refer the observation made by the Apex Court in para-12 in case of **Paramjeet Batra (supra)**, which is reproduced hereinafter:

“12. ...Whether a complaint discloses a criminal offence or not depends upon the nature of 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.”(emphasis supplied)

8. In case of **Usha Chakraborty (supra)**, while



quashing the FIR therein and further proceedings based thereon,
the Apex Court observed as under: -

‘...the factual position thus would reveal that the genesis as also the purpose of criminal proceedings are nothing but the aforesaid incident and further that the dispute involved is essentially of civil nature.’

9. The Apex Court has reiterated the aforesaid preposition in recent judgment of ***S.N. Vijayalakshmi & Ors. Vrs. The State of Karnataka and Anr.*** reported in ***(2025) SCC Online SC 1575.***

10. The petitioner has claimed in the present case that he is the owner of the land and the informant has admitted that a Title Suit No. 377 of 2011 was filed in respect of the same piece of land on the basis of Power of Attorney which has converted the civil dispute into a criminal dispute.

11. The records further reveal that the informant had accepted that the Khata No.1643/1656, Khesra No.981 measuring an area of about 12 katha in Village – Digha is in the names of Raj Dulari Devi, Dev Kunwar Devi and Shyam Kunwar, who are ancestors of the petitioner, and their names have also been recorded in continuous Register 2/*Khatian*. The learned Sub-Divisional Judicial Magistrate, Patna has taken cognizance on the basis of charge-sheet submitted under



Sections 341, 323, 427, 504, 506 and 34 of the Indian Penal Code but considering the allegation made in the FIR and the dispute being purely civil in nature, no ingredients under the aforesaid sections is made out against the petitioner and as such, further continuation of the said criminal proceeding shall result into abuse of Court of law.

12. The obvious caveat being that the allegations, even if having a civil flavor to them, must *prima facie* disclose an overwhelming element of criminality. In the absence of the element of criminality, if both civil and criminal cases are allowed to continue, it will definitely amount to abuse of the process of the Court, which the Courts have always tried to prevent by putting a stop to any such criminal proceeding, where civil proceedings have already been instituted with regard to the same issue, and the element of criminality is absent. If such element is absent, the prosecution in question would have to be quashed.

13. Considering the submission made on behalf of the parties, materials available on record, and the law laid down by the apex court I find that, the continuation of criminal proceeding in the present case shall be abuse of process of law.

14. Consequentially, the impugned order dated



28.03.2019 passed by learned Sub-Divisional Judicial Magistrate, Patna in connection with Digha P.S. Case No.358 of 2018 is hereby **set-aside** and **quashed** with respect to the present petitioner.

15. Accordingly, the present application stands disposed of.

(Purnendu Singh, J)

Ashishsingh/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	03.09.2025
Transmission Date	NA

