

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1062 of 2019

Arising Out of PS. Case No.-432 Year-2017 Thana- MADHEPURA COMPALINT CASE
District- Madhepura

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1. Janardhan Swarnkar Son Of Late Mohan Swarnkar Resident Of Mohalla - Suryaganj, Village - Aurahi- Ekparha, Ward No.15, P.S.- Gamharia, District - Madhepura.
 2. Sheonandan Swarnkar Son Of Late Mohan Swarnkar Resident Of Mohalla - Suryaganj, Village - Aurahi- Ekparha, Ward No.15, P.S.- Gamharia, District - Madhepura.
 3. Parsuram Swarnkar @ Parsuram Prasad Swarnkar Son Of Late Mohan Swarnkar Resident Of Mohalla - Suryaganj, Village - Aurahi- Ekparha, Ward No.15, P.S.- Gamharia, District - Madhepura.
 4. Krishnadeo Swarnkar Son Of Janardhan Swarnkar Resident Of Mohalla - Suryaganj, Village - Aurahi- Ekparha, Ward No.15, P.S.- Gamharia, District - Madhepura.
 5. Nago Swarnkar @ Nageshwar Swarnkar Son Of Janardhan Swarnkar Resident Of Mohalla - Suryaganj, Village - Aurahi- Ekparha, Ward No.15, P.S.- Gamharia, District - Madhepura.
 6. Nandu Swarnkar @ Nand Kishore Swarnkar Son Of Janardhan Swarnkar Resident Of Mohalla - Suryaganj, Village - Aurahi- Ekparha, Ward No.15, P.S.- Gamharia, District - Madhepura.
 7. Daya Swarnkar @ Dayanand Swarnkar Son Of Sheonandan Swarnkar Resident Of Mohalla - Suryaganj, Village - Aurahi- Ekparha, Ward No.15, P.S.- Gamharia, District - Madhepura.
 8. Vidhya Swarnkar @ Vidhyanand Swarnkar Son Of Sheonandan Swarnkar Resident Of Mohalla - Suryaganj, Village - Aurahi- Ekparha, Ward No.15, P.S.- Gamharia, District - Madhepura.
 9. Deepak Swarnkar @ Sushil Kumar Son Of Parsuram Swarnkar Resident Of Mohalla - Suryaganj, Village - Aurahi- Ekparha, Ward No.15, P.S.- Gamharia, District - Madhepura.

... .. Appellant/s

Versus

1. The State Of Bihar
2. Nageshwar Sharma Son Of Late Babuwan Sharma Resident Of Mohalla - Suryaganj, Village - Aurahi- Ekparha, Ward No.15, P.S.- Gamharia, District - Madhepura.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Prakash Chandra Gupta, Advocate
For the State	:	Mr. Sadanand Paswan, Spl. PP
For Respondent No.2	:	Mr. Bam Bahadur Jha, Advocate



CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

22 16-01-2025 Heard the learned counsel for the appellants, learned Spl. PP for the State and learned counsel for the respondent No. 02.

2. At the over outset, learned counsel for the appellants has submitted that the appellant no. 01/Janardhan Swarnkar has died and hence, he seeks permission to withdraw this application filed on behalf of appellant no. 01/Janardhan Swarnkar.

3. Permission is accorded.

4. Accordingly, this application filed on behalf of appellant no. 01/Janardhan Swarnkar is dismissed as withdrawn.

5. This is an appeal against the order/judgment dated 12.10.2018, passed by the Special Court, SC/ST, Madhepura in SC/ST Complaint Case No. 432 of 2017, taking cognizance against the appellants under Sections 147, 341, 448, 323, 379 of the Indian Penal Code and under Sections 3(i)(s) of the SC/ST Act.

6. The factual matrix giving rise to the instant proceeding on the basis of the complaint, in brief, is that on 08.10.2017 at about 4.30PM, all the accused persons came to the house of the complainant armed with weapons and Nago



Swarnkar, while abusing, fired a shot in the air from a gun and Janardan Swarnkar and Shivnandar Swarnkar, in a contemptuous tone, started abusing Sala Jolha and said that I had asked you to demolish the house, why did you not remove it and ordered the other accused to loot the household goods of the house and demolish the house. On protest, Parshuram Swarnkar tied the complainant to a peg and started beating him with slaps and by threatening his life, forcibly got his thumb impression on two plain stamp papers and handed it over to Shivnandan Swarnkar and other accused broke and destroyed the house of the complainant and when the wife of the complainant stopped them from breaking the house, then Nago Swarnkar, Nandu Swarnkar and other accused broke the house of the complainant and destroyed it and when the wife of the complainant tried to stop them from breaking the house then Nago Swarnkar and Nandu Swarnkar's wife thrashed her and abused her. The complainant suffered a loss of two thousand rupees and accused Daya Swarnkar and Vidha Swarnkar took away a briefcase containing six thousand rupees in cash and clothes worth two thousand rupees from the house of the complainant and Deepak Swarnkar opened the chest of the complainant and took away the same.



7. It has been submitted by the learned counsel for the appellants that it is apparent from the complaint petition itself that complainant is residing on a Government land since 60-70 years. The appellants are residing nearby and having difficulty in approaching their house. Apart from appellants, several other persons of the locality also were affected by the illegal occupation of the complainant. It is further stated that the Circle Officer, Madhepura had filed case against the complainant and his family members for capturing of Government land and in spite of order by the competent authority, the complainant had not vacated the Government Land. It is further stated that the appellant no.1 had also filed a proceeding under section 133 Cr.P.C. against the complainant, in which the S.D.O., Madhepura had in fact issued notice to the complainant for vacating the land in question.

8. The learned counsel for the appellants next submitted that pursuant to action taken by the appellants for vacating the land illegally occupied by the complainant, complainant has filed the present case, as a counter-blast against the appellants. Appellant no.4 is a Government teacher at a primary school and posted at about 30 K.M. from the house of the complaint and he was on duty at the time of occurrence and



was present in the school. In the solemn affirmation recorded in the court the complainant had admitted himself that the land on which they are residing is Government land. The witnesses in the complaint case are closely related to the complainant and deposed supporting the prosecution case in favour of complainant with malafide motive. The present case is based on mala fide motive by the complainant to take revenge against the appellants, who are taking action against the complainant to vacate the land.

9. The learned counsel for the appellants has next submitted that the Circle Officer on a complaint of appellant no.2, issued notice to the complainant reiterating therein that they have illegally captured the Government land and thus creating hurdle to the Passer-by in approaching their residence. It is further stated that on the complaint of petitioner no.2, the Public Grievance Redressal Officer Madhepura also issued an order to demolish the house of the complainant.

10. It is further submitted that the complainant does not belong Schedule Caste and Schedule Tribes and therefore, the proceeding initiated against the appellants is not maintainable under the SC/ST Act and the allegations levelled against the appellants are because of pending land dispute as the



complainant has captured the government land and when he has been directed to vacate the occupied government land, he has initiated this false case.

11. The learned Spl. PP for the SC/ST Act has very fairly submitted that *Jolha* is not a Schedule Caste and Schedule Tribes.

12. Learned counsel for the respondent no. 02 has vehemently opposed the prayer of the appellants.

13. I have considered the submissions of the parties and gone through the records.

14. The complaint case has been filed by the complainant who claims himself to be a *Jolha* which does not falls under the Schedule Caste and Schedule Tribe category. Moreover, there is pending land dispute between the parties and proceedings have also been initiated against the complainant by the Circle Officer for vacating the land in question.

15. In these circumstances this kind of mala-fide should be allowed to continue.

16. In view of the law laid down by the Hon'ble Supreme Court in the case of *State of Haryana Vs Bhajan Lal, 1992 Supp (1) SCC 335*, this application is allowed.

17. Accordingly, the order/judgment dated



12.10.2018, passed by the Special Court, SC/ST, Madhepura in
SC/ST Complaint Case No. 432 of 2017 is hereby set aside.

(Sandeep Kumar, J)

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