

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37331 of 2016

Arising Out of PS. Case No.-269 Year-2015 Thana- WEST CHAMPARAN COMPLAINT
District- West Champaran

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1. Pannalal Sah @ Pannalal Prasad son of Late Gudari Sah resident of Village/Mohalla- Prakash Nagar Ward No. 10, P.S. Shiarpur- District- West Champaran
 2. Mukesh Singh Son of Parmanand Singh resident of Madawari Muhalla, Narkatiyaganj, P.S.- Shikarpur, District- West Champaran

... .. Petitioners

Versus

1. State of Bihar
2. Raghubar Sharan Son of Ramayan Sharan Shrivastava resident of Pokhara Chowk Narkariyaganj, P.S.- Shikarpur, District- Wet Champaran

... .. Opposite Parties

Appearance :

For the Petitioners	:	Mr. Bimlesh Kumar Pandey, Advocate Mr. Krishna Kant Pandey, Advocate
For the State	:	Mr. Shailendra Kumar Singh, APP
For the O.P. No.2	:	Mr. Akhileshwar Kumar Shrivastava, Advocate Mr. Amrit Kriti, Advocate

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 18-02-2025

The present petition under Section 482 Cr.PC has been preferred by the petitioner against the impugned order dated 25.04.2016 passed by learned Judicial Magistrate, Ist Class, Bettiah, West Champaran in Complaint Case No. 269C of 2015 corresponding to Trial No. 3022 of 2016, whereby learned Magistrate has taken cognizance of offence punishable under Section 147, 148, 489 and Section 385 of the Indian Penal Code against the petitioners.

2. The factual background of this case is that the



Opposite Party No.2/Raghubar Sharan submitted his written report to the Officer-in-Charge, Police Station-Shikarpur, Narkatiyaganj, West Champaran whereupon, Shikarpur P.S. Case No.86 of 2013 was registered on 19.03.2013 against the petitioner/ Pannalal Sah and 15-20 unknown persons for the offences punishable under Sections 147, 148, 489 and 385 of the Indian Penal Code.

3. In pursuance of the said FIR, the police conducted the investigation, but after investigation, the police filed closure report finding the case untrue against the petitioners. The closure report was accepted by learned Magistrate. However, the protest petition filed by the Opposite Party No.2 was treated as Complaint and after inquiry under 200 Cr.PC, learned Magistrate has passed the impugned order taking cognizance of offence against the petitioners.

4. I heard learned counsel for the petitioners, learned APP for the State and learned counsel for the Opposite Party No.2.

5. Learned counsel for the petitioners submits that the petitioners are innocent and have falsely been implicated in this case. He further submits that after lodging of the FIR, the police had conducted the full investigation and finding the



allegation false against the petitioner, the police submitted the closure report.

6. He further submits that as per the statements made by the Complainant and the witnesses during inquiry under Section 200 Cr.PC, there is no whisper against the petitioner no.2, Mukesh Singh. He further submits that even against the petitioner no.1/Pannalal Sah @ Pannalal Prasad, there is no specific allegation against him. All the statements made by the Complainant and his witnesses are general and omnibus. There is no specific allegation even against the petitioner/Pannalal Sah let alone any allegation against the other petitioner/Mukesh Singh.

7. He further submits that the whole complaint appears to be prompted by *mala fide* to harass the petitioner, because there is civil dispute between the petitioners and the Opposite Party No.2 in regard to the land in question. Moreover, from the meaningful reading of the statements made by the Opposite Party No.2 before learned Magistrate under Section 200 Cr.PC, no case is made out, because as per the allegation, the petitioners have forcibly took possession of the property in question. However, as per his own statement before learned Magistrate under Section 200 Cr.PC, he is in possession of the



property.

8. However, learned APP for the State and Learned Counsel for the Opposite Party defend the impugned order submitting that there is no illegality or infirmity in it and the present petition is liable to be dismissed.

9. Learned counsel for the Opposite Party No.2 further submits that as per the allegation, *prima facie* case is made out under Section 147, 148, 489 and 385 of the Indian Penal Code and the present petition is liable to be dismissed.

10. He also submits that there is no civil dispute between the Opposite Party No.2 and the petitioners.

11. He further submits that trial is on the verge of conclusion, because all the witnesses except one, have been examined and discharged.

12. I considered the rival submissions advanced by the parties and perused the material on record.

13. At the outset, it would be relevant to point out that with the change of stage in the criminal proceeding, any petition under Section 482 Cr.PC for quashing the cognizance order does not get infructuous. Here, **Md. Naushad Khan and Anr. Vs. State of Bihar and Anr** as reported in **2023 SCC onLine Pat 9587** may be referred to, where this Court has



examined this issue in detail holding as follows:

“19. As such, it emerges that the High Court continues to have power to entertain and act upon the petition filed under Sec 482 CrPC even after change in the stage of the trial. There is nothing in Sec 482 CrPC to restrict the exercise of power only so long as the stage of the proceeding as it was at the time of the petition continues to be the same. It would be travesty of justice to hold that the proceeding initiated against the person can not be interfered with when it reaches its next stage, even if interference is required to prevent the abuse of the process of the court and to meet the ends of justice. It would be grave injustice to subject the petitioner to the agony and travails of the criminal trial. Inherent power of High Court has been saved to advance justice and not to frustrate it.

20. However, when the trial has reached the stage of judgment, it is not desirable to act upon the petition. After the judgment, the petitioner would have liberty to file appeal wherein he may raise all points of law and facts.

21. As such, the submission on behalf of the State and the Informant that the present petition has become infructuous with change of the stage of the trial can not be accepted. This court is duty bound to entertain and act upon the petition even when the trial has reached the stage of prosecution evidence.”

14. Now, coming to the merit of the case, I find that as per the allegation, the petitioners have taken possession of the property in question by putting up some symbols of possession. However, as per the statement of the Complainant during inquiry under Section 200 Cr.PC, he himself has stated that he is in possession of the property in question. This fact renders the allegation absurd. I further find that the petitioner has made general and omnibus allegation against the petitioner no.1. No specific role has been alleged by the Opposite Party No.2 in his



statement before the Magistrate. Name of the co-petitioner has not been even whispered in his statement by the Complainant or other witnesses. Moreover, I find that the police, an independent agency, has investigated the matter and found the allegation false against the petitioners.

15. Hence, I find that no prima facie case is made out. The allegation is frivolous and prompted by previous enmity against the petitioners. Accordingly, the impugned order is not sustainable in the eye of law and it is liable to be quashed and set aside under Section 482 Cr.PC.

16. Accordingly, the present petition is allowed quashing and setting aside the impugned order.

17. If the petitioners are making rival claim to the property or trying to interfere in the peaceful possession of the property, the Opposite Party No.2 has remedy by way of filing civil suit for injunction against the petitioners.

(Jitendra Kumar, J.)

Chandan/-

AFR/NAFR	NAFR
CAV DATE	NA
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