

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.44527 of 2015

Arising Out of PS. Case No.-397 Year-2013 Thana- BUXAR COMPLAINT CASE District-
Buxar

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Ram Sagar Ojha Son of Late Shiv Bachan Ojha Resident of Village -
Kharhatand, P.S. - Simri, District - Buxar.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Ram Pravesh Ojha Son of Madhusudan Ojha Resident of Village -
Kharhatand, P.S. - Simri, District - Buxar.
3. Shambhu Nath Singh Son of Late Hardeo Singh Resident of Village -
Chakki Bhola Dera, P.S. - Barhampur, District - Buxar.
4. Brahmdeo Singh Son of Late Ramvilash Singh Resident of Village -
Mahrauli, P.S. - Simri, District - Buxar.
5. Harendra Singh Son of Lalmohar Singh Resident of Village - Mahrauli, P.S.
- Simri, District - Buxar.
6. Shambhu Kumar Srivastava Son of Unknown Katib, License No. 15/2002,
R/o Buxar, District - Buxar.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s :	Mr. Digvijay Kumar Ojha, Advocate
For the Opposite Party/s :	Mr. Jharkhandi Upadhyay, APP
For the O.P. No. 3, 5 & 6:	Mr. Sumit Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

9 17-04-2025 Heard the learned counsel for the petitioner, learned

APP for the State and the learned counsel for the O.P. No. 03, 05

and 06.

2. This application has been filed for quashing the

order dated 09.04.2014 passed in Complaint Case No. 397(C) of

2013 passed by the learned Judicial Magistrate 1st Class, Buxar

by which the Court below rejected the complaint case of the

petitioner by mentioning that the case is not maintainable as



well as for quashing the order dated 09.02.2015 passed in Cr. Rev. No. 78 of 2014 by the learned Sessions Judge, Buxar by which the learned Sessions Judge, Buxar rejected the revision of the petitioner without appreciating the facts of the case.

3. As per the prosecution case, one Ram Sagar Ojha filed a complaint case before learned C.J.M., Buxar on 29.04.2013 being Complaint Case No. 397(C)/2013 stating that accused Ram Pravesh Ojha is the cousin brother of the complainant who is separately living after partition in his share of land. On which others are also coming in their possession of land. In the year 2003 the complainant was in Govt. Service at Bhatgaon, Chhatisgarh Koilwary and retired from service in the year 2009. Further in the year 2003, the complainant had come from service at his village and started managing agriculture in his village. So, accused Ram Pravesh Ojha instigated the complainant to purchase his land, on which due to his pressure, the complainant became ready. Thereafter, on 11.10.2003 the consideration amount of Rs. 68,000/- was fixed between the parties for a total of 72% decimal land, the transfer was done through two registration deeds and possession was taken by the complainant. Further, it was agreed between the parties that the mutation process would be completed by the accused no. 1 in



absence of complainant due to his job, and for that the complainant paid him Rs. 5000 in lump sum and later on in subsequent years the complainant paid Rs. 150 every year for making payment of *malgujari* to the accused no.1 and whenever he inquired about the mutation paper and *malgujari* receipt, he didn't get a satisfactory answer and ultimately their relationship turned sour upon which all the accused persons conspired against the complainant and sold the same piece of land to accused no.2 through a forged registration deed. On 25.4.13 when the complainant got the information of the above conspired act, he managed to get a copy of the forged document and on 28.4.13 accused no.2 and accused no.1 arrived on the said piece of land along with labourers and started digging the earth. On getting information, the complainant along with his friends reached there and opposed the earth digging activity on his bought piece of land upon which the accused persons started beating him with fists and slaps and made him to fall on the ground, people present there intervened and the matter was pacified. The complainant asked the accused no.1 to return Rs. 5000 (paid as lump sum for mutation) and Rs. 1200 (150 Rs. per year for 8 years) amounting to Rs. 6200 upon which he started abusing him and said that he would not return the said amount.



4. On the basis of the complaint of one Ram Sagar Ojha. Complaint Case No. 397(C) of 2013 was registered for offence under sections 420, 406, 467, 468, 471, 323, 504, 120(b) of the I.P.C. dated 29.4.13 in the court of C.J.M., Buxar. The learned J.M. 1st Class, Buxar, *vide* its order dated 9.4.14 refused to take cognizance in the aforesaid case and dismissed the complaint on the ground that the case is of a civil nature and hence not maintainable. Thereafter, the complainant approached the Sessions Court, Buxar by filing Cr. Revision no. 78/2014 against the order dated 9.4.14 which was dismissed by the learned Sessions Judge, Buxar *vide* its order dated 9.2.15 on the same ground that the case is of a civil nature, not maintainable, hence affirmed the order dated 9.4.14 of the Court below.

5. Learned counsel for the petitioner has submitted that on perusal of the complaint it is clear that the background of the case is related to dispute of civil nature between the parties but the act in question is not of the background rather the act in question is of criminal nature which was committed by the named accused on 28.4.13 and in the complainant's piece of land and the accused persons have committed fraud with the petitioner and accused no.1 knowingly executed the same piece of land to accused no.2 (Shambhu Nath Singh) which was



earlier executed in favour of the complainant. He further submits that the relief sought is not only against the dispute related to the complainant's property sold to another person namely Shambhu Nath Singh (accused no.2) by the accused persons rather it is also against the act of assault and use of abusive and filthy language by the accused persons against the complainant on 28.4.13.

6. The learned counsel for the petitioner has next submitted that the impugned order dismissing the complaint case suffers from lack of application of judicious mind. Since only on the basis of wrong assessment of facts this complaint case can't be held as not maintainable. The Court below as well as the learned Sessions Court has erred in dismissing the complaint without appreciating the immediate set of facts which resulted in occurrence dated 28.4.13.

7. Learned counsel for the O.P. No. 03, 05 and 06 has opposed the prayer of the petitioner and has submitted that the impugned orders have rightly been passed and therefore no case for interference is made out.

8. I have gone through the records of the case. From the complaint, statement of the complainant on solemn affirmation and two witnesses, it appears that *prima-facie*



offence under the various provisions of the Indian Penal Code as alleged by the complainant are made out against the petitioner and just because there is a civil dispute between the parties; the criminal complaint cannot be dismissed.

9. Considering the aforesaid facts and circumstances, this application is allowed. Accordingly, the order dated 09.04.2014 passed in Complaint Case No. 397(C) of 2013 passed by the learned Judicial Magistrate 1st Class, Buxar as well as the order dated 09.02.2015 passed in Cr. Rev. No. 78 of 2014 by the learned Sessions Judge, Buxar are hereby set aside.

10. The matter is remitted back to the Magistrate concerned for passing a fresh order in accordance with law from the stage of cognizance.

(Sandeep Kumar, J)

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