

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.72509 of 2018

Arising Out of PS. Case No.-1393 Year-2006 Thana- ROHTAS COMPLAINT CASE
District- Rohtas

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Anil Kumar @ Anil Singh S/o Anirudh Singh Resident of Village-Sakhra,P.S.
Dihri,Distt.-Rohtas,Bihar

... .. Petitioner/s

Versus

1. State Of Bihar
2. Mathura Singh S/o Late Awdhesh Singh Village Kherha,P.S. Dihri
Town,Distt.-Rohtas,Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Amaresh Kumar Sinha

For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL ORDER

4 21-04-2025

Heard the parties.

2. The present application has been filed for quashing the order dated 03.08.2018 passed by the learned Judicial Magistrate, First Class, Dehri-on-Sone in Complaint Case No. 1393 of 2006 (T.R No. 432 of 2018), whereby the application under section 245 of the Code of Criminal Procedure, 1973 seeking discharge preferred by the present petitioner has been rejected.

3. The present case emanates from the complaint case wherein the complainant one Mathura Singh states inter alia that the complainant is the Bonafide owner of the property situated



in district of Rohtas which is detailed and described in the complaint petition. The complainant alleges that on the date of occurrence, i.e., 21.12.2006, the petitioner along with other accused persons came to the aforesaid land of the complainant holding different weapons in order to cut the paddy grown on the field of the complainant. When the complainant tried to resist, the accused persons threatened and started firing in the air. Meanwhile, the co-accused Anil Dubey tried to get hold of the complainant but the complainant managed to run away from the place of occurrence. It has further been alleged by the complainant that subsequently when the complainant again came back, he saw that some labourers were engaged in harvesting the paddy from his field and being carried on a tractor which belonged to the accused persons namely Dina Yadav and Amarjeet Singh. Thereafter, the complainant approached the Officer-in-charge of P.S. Dehri and narrated the entire incident however it is further alleged that the Police refused to lodge the case and therefore the complainant alleges that the police were also acting in connivance with the accused persons. In the evening when the complainant returned, he observed that around ten *bighas* of land with paddy crops were harvested by the accused persons which amounted to rupees



sixty-five thousand. It has also been alleged that on the instruction of co-accused Upendra Kumar Singh, the Circle Officer, Dehri issued an order under section 145 of the Indian Penal Code whereby both the parties i.e. the complainant and the accused persons were prevented from entering into the land and furthermore had directed the police to harvest the paddy grown on the land. The aforesaid order of the Circle Officer was successfully challenged by the complainant and the same came to be quashed by the District and Sessions Court, Dehri, vide order dated 07.12.2006. Thereafter, being aggrieved by the act of the accused persons including the petitioner, the complainant has filed the complaint petition before the learned Judicial Magistrate, First Class, Dehri.

4. Learned counsel for the petitioner submits that the present petitioner has been arrayed as accused no. 10 in the instant complaint case. The learned counsel for the petitioner reiterates that the discharge application preferred by the petitioner was rejected by the Court vide order dated 03.08.2018 and emphasises that the aforesaid order of rejection is totally arbitrary and passed in a mechanical manner.

5. The learned counsel for the petitioner has vehemently stressed that the present case is merely an attempt to



pressurise the petitioner since the father of the instant petitioner who is also arrayed as an accused in the present complaint had preferred to initiate criminal proceedings against the complainant and his son. The learned counsel points that the case filed by the father of the petitioner was registered as Dehri P.S. Case 350 of 2006 dated 14.12.2006 which is prior in date. Therefore, the learned counsel for the petitioner submits that the complainant in order to wreak vengeance upon the petitioner and as a counter blast to the aforesaid Dehri P.S. Case 350 of 2006 dated 14.12.2006 which was instituted by the father of the instant petitioner.

6. The learned counsel for the petitioner has next submitted that the learned magistrate, Dehri on Sone, Rohtas without giving due consideration to the oral and documentary evidences adduced had proceeded to pass the impugned order of rejection dated 03.08.2018. In order to further expound on this contention the learned counsel submits that there is no whisper of allegation against the petitioner in the complaint petition. It is submitted that since there is no material neither in the complaint petition nor in the evidences adduced on behalf of the complainant to make out a case under section 379 of the IPC, and therefore proceeding against the petitioner would amount to



gross abuse of the process of law. The learned counsel importing to section 379 of the IPC submits that even from a plain reading of the complaint none of the essential ingredients under the aforesaid section 379 are made out and the allegations fall flat since there is no allegation of dishonest intention in the part of the present petitioner and as such no offence of theft can be fastened against the petitioner.

7. The learned counsel for the petitioner next submits that the place of occurrence is merely at a distance of 02 kilometres from the residences of superior police authorities and therefore in broad daylight the incident as alleged by the complainant could not have taken place and is therefore inherently improbable. The complainant also directly preferred the instant complaint petition instead of approaching the higher police authorities which in itself points towards the malice on the part of the complainant.

8. It is submitted that the learned Magistrate also failed to consider that there is no specific allegation against the present petitioner and in the absence of any specific allegation together with total lack of any material against the petitioner could not have resulted in proceeding against the petitioner. The learned counsel further points that during the evidence before



charge, only two witnesses were examined except the complainant and both the aforesaid witnesses were the two sons of the complainant himself and as such were interested non-independent witnesses. It is submitted that the depositions of the two interested witnesses could not have been the basis for proceeding in the present complaint case.

9. The learned counsel for the petitioner has also submitted that the complainant himself is convicted in a case of Arms Act, 1959. It is vehemently argued that the previous convictions of the complainant itself clearly depict the conduct of the complainant. The learned counsel thereafter also submits that the complainant had deliberately misled the Magistrate by mentioning in the complaint petition that a proceeding under section 145 of the Cr. P.C was pending between the complainant and one of the accused namely Upendra Singh regarding the said land in question. However, the learned counsel points that the present petitioner had no role to play in the aforesaid proceedings under section 145 of the Cr. P.C. had no role of the petitioner.

10. I have considered the submissions of the parties and perused the materials available on record.

11. From the reading of the complaint petition, there



is no specific allegation attributable to the present petitioner, moreover the present case appears to have been instituted only as a counter blast to the case instituted by the father of the petitioner in order to wreak vengeance. The present appears to have been instituted maliciously with an ulterior motive to wreak vengeance on the petitioner due to prior private and personal grudge.

12. Therefore, in light of the law laid down by the Hon'ble Supreme Court in *State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335*, the aforesaid complaint case including the order dated 03.11.2022 passed by the learned Magistrate, in Complaint Case No. 1393 of 2006 are hereby quashed with respect to present petitioner only.

(Sandeep Kumar, J)

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