

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.40944 of 2015

Arising Out of PS. Case No.-2154 Year-2012 Thana- GAYA COMPLAINT CASE District-
Gaya

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1. Sanjay Yadav Son of Ram Lakhan Yadav
 2. Vikash Yadav@Vikash Kumar@Chote Kumar@chote sons of late Ram Charitra Yadav Both Residents of Village- Imanchak, P.s Belaganj, District Gaya at, Present Mohalla- Ramdaspur Lane, Gurudwara Road, Holding NO. 23/30, ward no. 4A/17,P.s Kotwali District Gaya.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Bipin Bihari Bhola son of shivram at Present residing at Dalmiya Compound Lakhbag, P.s Muffasil, District Gaya.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Abhay Kumar Thakur, Advocate
For the Opposite Party/s : Mr.Sunil Kumar Pandey, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

7 08-01-2026 Heard learned counsel for the petitioner, learned counsel for the State, learned counsel for O.P. No. 2 and Mr. Mritunjay Kumar, learned counsel for Punjab National Bank.

2. The explanation furnished by the Manager of Punjab National Bank is accepted.

3. The present application has been filed seeking the following reliefs:-

‘1. That, this application has been filed for quashing the order dated 29.07.2015 passed in Complaint Case No. 2154 of 2012 by Judicial Magistrate, Ist Class, Gaya, whereby and where under cognizance for the alleged offences under section 385,



448, 506/34 I.P.C. taken against all the accused persons petitioners herein, which has been taken on the petition filed as Complaint-cum-protest petition in Kotwali P.S. Case No. 40 of 2011 dated 12.02.2011 registered u/s 385, 448 I.P.C. wherein final form submitted and the case found false and proceeding u/s 182, 211 Cr.P.C. recommended and accordingly to initiate proceeding against O.P. No.2 and is pending in the Court of Smt. Sarika Vahelia, J.M. Ist Class, Gaya.

2. The factual matrix of the case inter-alia in brief is that Bipin Bihari O.P.no. 2 lodged F.I.R. on 11.02.2010 in Kotwali P.S. for the alleged offences under sections 385, 448 I.P.C. stating therein that named persons have encroached and stopped him for doing repair work in the house, which he has purchased in the name of his wife Bindu Kumari vide registered deed of sale dated 09.02.2010 bearing house holding no.23/30, Ward no.4A/17 Ramdaspur Gurudwara and upon said house under order of the DCLR, the appointed magistrate and police of Kotwali P.S. handed over possession of the said house on 11.11.2010 but in night the accused persons again encroached over the land, this incidence reported on 12.11.2010. It is alleged that the accused persons demanded Rs. 2,00,000/-for removing encroachment and on the basis of F.I.R. Kotwali P.S. Case No. 40/2011 dated 12.2.2011.

3. After registering the case the I.O. started investigation and during investi-gation the allegation found false. One of the accused persons namely Vikash Kumar @ Chote Kumar son of Late Ram Charitra Yadav who is working as orderly of Sri Vivek Kumar at that time posted as S.P. Naugachiya after coming to known



about lodging of false case made representation before the police authority and upon enquiry on the application of accused Vivek Kumar it is found that on the alleged date and place of occurrence he was not present due to the reason that he was on duty with Sri Vivek Kumar I.P.S., S.P. of Naugachiya and for searching truth provided call details of his mobile phone.

4. The I.O. of the case after analyzing all the facts found the case false and submitted the facts before the D.I.G. Magadh Range for necessary order and the D.I.G. Magadh Range issued direction for submitting final form with recommendation for initiating proceeding u/s 182, 211 I.P.C. vide final form no.257/2011 dated 30.09.2011.

5. After submission of final form (Annexure-2) by the I.O. of Kotwali P.S. Case No.40/11 12.02.2011 the [O.P.no.2](#) informant filed protest cum complaint case on 12.10.2011 after long delay which was registered as complaint case 2010 of no. 2154/2010 after submission of final form.

6. Prior to this the informant [O.P.no.2](#) has also filed a Complaint Case in the same set of alleged occurrence Complaint these Case no.2150 of 2010 against petitioners and the same is pending for disposal.

7. The informant Bipin Bihari Bhola filed Land Dispute Case no.35/2010-11 before the D.C.L.R. Gaya Sadar, Gaya and the D.C.L.R., Sadar passed order dated 15.09.2010 for removing encroachment over the alleged claimed land of informant and the said order issued vide memo no.1058 dated 15.09.2010 and deputed police personnel and on the police personnel visit and enquiry found no encroachment as alleged.



8. *Against the order dated 15.09.2010 passed in Case no.35/2010-11 the land owners Appeal filed before the Commissioner Magadh Division, Gaya and the matter was remitted back for hearing and the hearing of matter took place afresh and the L.D.Case No.35/2010-11 dismissed vide order dated 05.08.2011.*

9. *The Land owners Sampurnananda Mishra and ors have made application before the City Dy.S.P. Gaya and enquiry was conducted and it is found that the applicants are in possession of house and land and the spot submitted vide Memo inspection report no.2869 of 2010 dated 09.12.2010 to this application.*

10. *The wife of informant Bindu Kumari has filed application for mutation of her name in Municipal record on the basis of purchase vide registered sale-deed and Mutation case no.107 of 2010 initiated and the Mutation case no. 107/2010 was decided vide order dated 23.10.2013 favour in of Sampurnanand Mishra and ors.*

11. *From the Complaint Case No.2150/2010 (Annexure-4) and the F.I.R. Kotwali P.S. Case No.40/2011 (Annexure-1) and protest cum Complaint Case No.2154/2012 (Anneuxre-3) it is apparent that the petitioners have been victimized in several cases for one occurrence and at present two separate criminal case are going on vide Annexure-3 and 4 which is bad in law.*

12. *Even on assumption the alleged matter is of dispute of civil nature relating to possession over the land which has been decided in favour of land owners who has kept the petitioners as petitioners are residing and running dairy business at the house of Sampurnananda Mishra and others in whose favour*



Mutation Case No.107 of 2010 (Annexure-8) has been ordered and the informant has lodged false F.I.R. and complaint case to harass and torture the petitioners.

13. The entire prosecution going on, on the basis of F.I.R. registered as Kotwali P.S. Case No.40/2011 and Complaint Case no.2154 of 2012 is malicious in nature and is tool to grab possession over the land of land owners of petitioners.

14. During enquiry u/s 202 Cr.P.C. on complaint cum protest petition only one enquiry witness examined (informant) and cognizance has been taken against the accused persons including dead person. The order taking cognizance is wholly bad, and is a piece of non consideration of facts and non application of judicial mind and out come of perverse exercise of judicial.'

4. Learned counsel for the State and learned counsel for O.P. No. 2 have opposed the application and have submitted that cognizance taken are being done after application of mine.

5. From the facts noted above it is clear there is civil dispute between the parties i.e. the petitioners and O.P. No. 2 and litigations are going on. The police after investigation had found the case false, submitted final form and prayed for initiating proceedings against the O.P. No. 2 for launching malicious prosecution. The impugned order has been passed on a complaint case.

6. In my opinion because of the civil dispute between



the parties, the present malicious prosecution has been launched.
In light of Supreme Court judgment in the case of **State of Harayana Vs. Bhajan Lal** reported in **1992 Supp(1) SCC 335** this kind of malicious prosecution should not be allowed to continue the same.

7. Therefore, this application is allowed. The prosecution of the petitioner is quashed, the parties may get their civil dispute finally decided in the district Court.

(Sandeep Kumar, J)

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