IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 21579 of 2014

Arising Out of Complaint Case No.-1299 (C) Year-2006 Thana- BHOJPUR COMPLAINT CASE District- Bhojpur

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Fr. Joseph Pulickal @ Father Joseph @ Father Josif, Son of Late Thomas Pulickal Resident of Catholic High School Ara, at present residing at Jesuit Residence Bhagvanpur, P.S. - Bhagvanpur, District - Muzaffarpur.

... ... Petitioner/s

Versus

1. The State of Bihar.
2. Lal Babu Rai, Son of Late Ram Ashray Rai, Resident of Village-Pakari, P.S. - Ara Nawada, District - Bhojpur.
3. Sri Ram Naresh Singh, Officer-in-Charge, P.S.- Ara Nawada Ara, District - Bhojpur.
4. Sri Parshuram Singh, Assistant Sub Inspector, P.S. - Ara Nawada, District – Bhojpur.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. K. M. Joseph and Mr. Benjamin Lakra, Advocates
For the Opposite Party/s	:	Mr. Madanjeet Kumar, Advocate
For the State	:	Mr. Jharkhandi Upadhyay and Mr. Nagendra Prasad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 04-04-2019

Heard learned counsel for the petitioner; learned A.P.P. for the State and learned counsel for the opposite party no. 2.

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2. The petitioner has moved the Court under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') for the following relief:

> *"That the Present application is directed against order dated 05.04.2014 passed by Sri Ashutosh Kumar Learned Judicial Magistrate 1st Class Ara in Complaint Case no. 1299 [c] of 2006/ Tr. No. 3130 of 2007 whereby the learned Court below dismissed the application dated 17.02.2014 filed by the petitioner herein under see 245 of Criminal Procedure Code for discharge of the petitioner who stand accused under section 147, 148, 447, 427/149 I.P.C.*

3. The allegation against the petitioner and six others in the complaint filed by the father of the opposite party no. 2 (who was originally made the opposite party no. 2 but because of his death during the pendency of the present proceeding has been substituted by his son), is of forcibly ploughing the field belonging to the opposite party no. 2, with the help of the police causing loss of Rs. 15,000/- to the opposite party no. 2.

4. Learned counsel for the petitioner submitted that the criminal case is totally *mala fide* and has been filed for oblique reasons to put pressure on the petitioner to give up the land which rightfully belongs to the Patna Diocesan Corporation /Shahabad Parish Society (hereinafter referred to as the 'Corporation'). It was submitted that the land relating to survey Plot No. 1282, originally belonged to Sohal Lal who sold it to Lobhan Ahir by registered

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sale deed dated 20.05.1925 and Lobhan Ahir has transferred the said plot to the Corporation through registered deed on 28.02.1942 and also on 31.03.1944 with regard to plots no. 1283 and 1284. Learned counsel submitted that in Title Suit No. 526 of 2001, filed by one Raghunath Rai, in which the Corporation as well as the opposite party no. 2-complainant are parties along with others, includes the lands in question. It was submitted that in the Title Suit, it is accepted that the lands were transferred in terms of the sale deeds referred above but objection has been taken that the lands did not belong to Sohan Lal and, thus, could not have been bought by the Corporation. Learned counsel submitted that once it is accepted that there is registered sale deed in favour of the Corporation, there cannot be any question of the petitioner being dispossessed from the land except by due process of law, which has admittedly not been done. It was submitted that the sale deeds relate to the years 1942 and 1944 and, thus, in the year 2006 i.e., after 72 years, without there being any order of any competent Court against the Corporation, in law, it has to be presumed that the right, title and possession of the Corporation is intact. Learned counsel submitted that in the year 1986, they had instituted Case No. 261 of 1986, before the Sub Divisional Officer, Sadar, Ara, against witness no. 1 in the present complaint petition, who is also

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defendant no. 3 in the Title Suit No. 526 of 2001, whereas the original complainant-opposite party no. 2 is defendant no. 2 in the said Title Suit. It was submitted that by order dated 27.12.1986, the Sub Divisional Magistrate, Sadar, Ara, after hearing the parties, had passed a detailed order and had also gone through all the documents submitted by the parties and had arrived at the conclusion that from the documents, the possession of the Corporation was established and that the other side had no possession over the same. Learned counsel submitted that this finding has not been interfered by any Court till date. However, he submitted that when there was apprehension of breach of peace by the Corporation with regard to dealing with the lands in question, again in Case No. 155 of 1987, by order dated 25.07.1987 and 27.07.1987, the Sub Divisional Magistrate, Sadar, Ara had passed order for deputing a Magistrate to head the police force. It was submitted that though the said order was carried out, however, the co-sharers of the opposite party no. 2, i.e., defendants no. 2 and 3 in the Title Suit, challenged the same in Revision No. 252 of 1987 and by order dated 12.04.1990, it was set aside on the ground that the revisionists were not heard and no provision of law was mentioned in the order. Learned counsel submitted that though this order has been referred in the complaint but the same is of no

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help to the opposite party no. 2, for the reason that the order only for deputing a Magistrate and police force of the year 1987 has been set aside, which had already been implemented and, thus, for all practical purposes, the order dated 12.04.1990 by the 9th Additional Sessions Judge, Ara is of no consequence. However, it was submitted that the finding with regard to the possession of the petitioner, as earlier upheld by the Sub Divisional Magistrate, Sadar, Ara by order dated 27.12.1986, on the basis of documents produced before him by both the parties, has never been interfered. Learned counsel submitted that even if it is accepted that the authorities were there to maintain the law and order, there cannot be any charge, much less any criminal charge, if the petitioner had actually ploughed the land, which, in the eyes of law, belongs to the Corporation and over which its possession has been found to be existing and upheld by the authorities.

5. Learned A.P.P. submitted that the Court below after examining the witnesses has found material and, thus, has rightly not discharged the petitioner. He further submitted that even if there is a civil cause of action for the same, there can be a criminal case also. However, on a query of the Court as to how criminal offence is made out when clearly the allegation is that a land was ploughed and which, in the eyes of law, belongs to the

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Corporation, learned A.P.P. could not support the filing of a criminal case.

6. Learned counsel for the opposite party no. 2 submitted that the order passed by the Sub Divisional Magistrate, Sadar, Ara dated 25.07.1987 and 27.07.1987, for deputing Magistrate and police force having been set aside, the authorities as well as the petitioner had no right to go and plough the land. Learned counsel further contended that the revisional order dated 12.04.1990 passed against the Corporation has not been challenged till date. Learned counsel submitted that the sale deeds of the years 1942 and 1944, in favour of the Corporation are under challenge in Title Suit No. 526 of 2001. Learned counsel submitted that the averment made in the complaint is that there were small crops of paddy on the land in question which was damaged, which has not been controverted. At this juncture, on a specific query of the Court as to how the opposite party no. 2 can claim that it was his paddy crop which was on the land when the right, title and possession of the land itself has been held in favour of the petitioner, learned counsel submitted that the finding recorded in the order of the Sub Divisional Magistrate, Sadar, Ara dated 27.12.1986, shall be valid for only 60 days.

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7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that a case for interference has been made out.

8. As has rightly been contended by learned counsel for the petitioner, the allegation made in the complaint are absolutely frivolous in nature and clearly with *mala fide* intention to put pressure for somehow taking over the land belonging to the Corporation.

9. It is not in dispute that till date the lands in question are coming in the name of the Corporation being entered in the official records based on registered sale deeds of the year 1942 and 1944. It has been admitted by learned counsel for the opposite party no. 2 that challenge to the said registered sale deeds is there in Title Suit No. 526 of 2001 which is still pending. Further, when there is a specific finding in the order dated 27.12.1986 of the Sub-Divisional Magistrate, Sadar, Ara in favour of the Corporation with regard to possession, that too based on appraisal of all the documents produced by both the sides before him, and such finding not being interfered till date, it can be safely presumed and even held that the lands in question were in possession of the Corporation. Contention of learned counsel for the opposite party no. 2 that the said finding also gets washed

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away after 60 days is, in the considered opinion of the Court, completely erroneous. A finding never gets washed away. Only the actual order may lose its force due to efflux of time depending on the mandate of the Statute. Thus, whatever order the authority may pass under Section 144 of the Code, may lose its efficacy after 60 days. However, in the order dated 27.11.1986 itself, it has been mentioned that the prohibitory order was being made absolute in favour of the Corporation and against the opposite party no. 2, would clearly mean that the "order" which was restricted to "prohibition", would last only for 60 days. It would not mean that the finding recorded in the order also gets obliterated. This is a completely erroneous presumption and absolutely perverse reading of the order dated 27.11.1986.

10. Coming to the contention of learned counsel for the opposite party no. 2 that the revisional order dated 12.04.1990 has not been assailed, the Court would only indicate that such order is itself a futile order for the reason that the order of the Sub Divisional Magistrate, Sadar, Ara dated 25.07.1987 and 27.07.1987 having already being implemented and executed, there was neither any occasion for the Corporation to appear nor challenge the same, for in any case, the issue itself had ended, much prior to passing of the order dated 12.04.1990. The Court

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would note here that in the said order dated 12.04.1990, there is absolutely no finding, either against the Corporation or in favour of the opposite party no. 2-complainant.

11. Further, the Court finds that the petitioner, even if was ploughing or dealing with the lands in question, which have been held to be in its possession by the Competent Authority and with regard to which he has in his possession registered sale deeds of the years 1942 and 1944 and the said order as well as finding in the order dated 27.12.1986 and the registered sale deeds not being interfered till date, there can be absolutely no charge against him for doing the same.

12. At this juncture, the Court would further observe that the allegation that there were small crops on the land belonging to the opposite party no. 2-complainant, is absolutely unbelievable and unacceptable for the reason that a plea cannot be taken that on a land not belonging to a party, he would go and forcibly sow paddy and that when the real owner in law comes, he cannot deal with the same. Even if it is accepted that the opposite party no. 2 had committed an illegality of sowing the field, it was well within the right of the person in whose favour, in the eyes of law, there is right, title and possession, to go and deal with the lands in question as he so wishes. It would be relevant to

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indicate here that the land is an open land over which crops are grown and it is not the case of the opposite party no. 2 that he was in occupation of a house of premises from which he has been forcibly evicted. Had that been the case, then, probably, the opposite party no. 2 would have had a case that even a trespasser cannot be removed except, in accordance with law, through the process of the Court. In the present case, it is admitted that the land in question was an open field and if at all the opposite party no. 2 had dealt with the same, it was at his own risk and if the person entitled to deal with the lands in the eyes of law i.e., the Corporation, did so, it would not be illegal, much less make out any criminal charge against the person who in law holds the right and title and whose possession has been found by the Competent Authority.

13. Furthermore, the authorities are obliged under the Constitution of India to give protection to a person who can show his right, title and possession over the land in question, which at the cost of repetition, is in favour of the Corporation and has not been interfered by any authority/Court, which is competent to do so. Till such time, the same is not done, the right, title and possession of the Corporation has to be accepted in law and the same has also to be protected by the authorities obliged to

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maintain law and order and the right of a citizen of this country. Thus, the Court finds that the entire allegation where the petitioner and the authorities of the State are alleged to have facilitated the petitioner in ploughing the lands in question, which rightfully belongs to him, and with regard to which there is a presumption in law, no charge of any misconduct, wrongdoing, much less any criminal offence can be brought against them.

14. In this connection, the Court would refer to the decision of the Hon'ble Supreme Court in **State of Haryana vs. Bhajan Lal** reported as **1992 Supp (1) SCC 335**, where at paragraph no. 102 categories have been enumerated where the Court ought to exercise its inherent power under Section 482 of the Code. The same reads as under:

> *"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a serious of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*
>
> *(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in*

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their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

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15. The present case, in the opinion of the Court, falls under category 7 of the aforesaid judgment in **Bhajan Lal** (supra) at paragraph no. 102.

16. Further, Hon'ble Supreme Court in the case of **State of Karnataka v. L. Muniswamy** reported as **(1977) 2 SCC 699**, at paragraph no. 7, has held as under:

> "7. ……In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice….."

17. In the aforesaid background, the Court finds that the present complaint case is absolutely malicious, *mala fide* and for the purpose of wreaking vengeance against the petitioner and to harass him and also for oblique reasons. Such action cannot be allowed to continue as it is clearly an abuse of the process of the Court.

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18. For reasons aforesaid, the application is allowed. The entire criminal proceeding arising out of Complaint Case No. 1299(C) of 2006 (T.R. No. 3130 of 2007), including the order taking cognizance as well as the order impugned stand quashed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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