

**Dipti Sen and Ors Vs. The State of Jharkhand and Anr**

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**SooperKanoon Citation :** [sooperkanoon.com/67637](http://sooperkanoon.com/67637)

**Court :** Jharkhand

**Decided On :** Jan-04-2016

**Appellant :** Dipti Sen and Ors

**Respondent :** The State of Jharkhand and Anr

**Advocate for Pet/Ap. :** Mr. Pandey Neeraj Rai

**Judgement :**

IN THE HIGH COURT OF JHARKHAND AT RANCHI Criminal Miscellaneous Petition No. 2399 of 2014 --- 1.Dipti Sen wife of Late Professor Tushar Kanti Sen 2.Ushir Sen @ Mitthu son of Late Professor Tushar Kanti Sen 3.Sampa Sen wife of Sri Ushir Sen 4.Krishna Kant Chaudhary son of Late Ram Chandra Chaudhary 5.Sachin Chaudhary, son of Sri Krishna Kant Chaudhary all residents of Mohalla Anandpuri Colony, near Sadar Anchal Office, PO & PS Hazaribagh, District Hazaribagh 6.Anupam Sahay son of Late Dr. Jyotindra Sahay and son-in-law of Dipti Sen 7.Elora Sen wife of Sri Anupam Sahay and daughter-in-law of Late Professor Tushar Kanti Sen; both resident of Mohall Hira Bag, PO & PS Hazaribagh, District Hazaribagh Petitioners Versus 1.The State of Jharkhand 2.Savita Kumari wife of Sri Rajeev Kumar resident of Mohalla Anandpuri Colony, Near Sadar Anchal Office, PO & PS Hazaribagh, District Hazaribagh Opposite Parties --- CORAM : HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY --- For the Petitioners : M/s. Pandey Neeraj Rai & Rohit Ranjan Sinha, Advocate For the Opposite Party No. 1 : Mr. Shiv Kumar Sharma, A.P.P. For the Opposite Party No. 2 : Mr. K. K. Singh, Advocate --- 11/04.01.2016 Heard Mr. Pandey Neeraj Rai,

learned counsel for the petitioner, learned A.P.P. appearing for the State and Mr. K. K. Singh, learned counsel for the opposite party no.

2. In this application, the prayer of the petitioners is for quashing the entire criminal proceedings in Complaint Case No. 910 of 2013 including the order dated 07.12.2013 passed by the Chief Judicial Magistrate, Hazaribagh by which cognizance has been taken under Sections 147, 323, 504, 506 of I.P.C.

3. A complaint case was instituted by the complainant - opposite party no. 2 against the present petitioners in which it has been averred that a piece of land having an area of 0.10 acres situated at Mouza Cantonment under Thana No. 157, Khata No. 84 (now 84/358), Plot No. 415 was purchased in the name of the mother and the aunt of the complainant from one Shashi Kant Chaudhary by virtue of registered sale deed no. 1224 dated 10.11.1986. Upon such purchase, a 2-dwelling house was constructed over the same. Before registration of the land, Shashi Kanti Chaudhary got a proposed house sanctioned vide Case No. 87/B in the year 1980-81. It has been stated in the complaint petition that the husband of the petitioner no. 1 had also purchased a piece of land having an area of 0.18 acres from one Hiyalal Singh vide registered sale deed no. 1821 dated 25.01.1971. Allegation has been made that by suppressing actual facts and by conniving with the scribe made false statement in the sale deed and 0.15 acre or more land was forcibly occupied. It has also been alleged that on 10.05.2013, the petitioner no. 1 had started demolishing the boundary wall of the complainant with the help of labourers to which the complainant had objected. A proceeding under Section 144 Cr.P.C. has been started at the behest of the complainant before the learned S.D.M., Hazaribagh which was subsequently sent for inquiry. On 14.05.2013, the accused persons in order to grab the property of the complainant had once again started demolishing the boundary wall. It is also been alleged that at the behest of the accused persons one Nivas Sharma @ Ashok Sharma who is involved in several criminal cases had reached the place of occurrence along with his associates and the accused persons have also actively participated in the assault made to the complainant resulted in her suffering injuries.

4. Based on the allegations narrated above, complaint case no. 910 of 2013 was initiated and on inquiry upon solemn affirmation by examining the complainant as well as her witnesses, cognizance was taken by the learned Chief Judicial Magistrate, Hazaribagh on 07.12.2013 for the offence punishable under Sections 147, 323, 504 & 506 of I.P.C.

5. Mr. Pandey Neeraj Rai, learned counsel for the petitioner has submitted that, it was the complainant party who were the aggressors and in fact an inquiry was caused to be conducted by the S.D.O. on the orders of the Deputy Commissioner, Hazaribagh and when the Circle Officer had went to the place of occurrence, the complainant party had prevented him to discharge his official duty which resulted in institution of Sadar P. S. Case No. 106 of 2014. It has also been submitted that since the dispute was with respect to the land in question, a title suit was instituted by the mother and aunt of the complainant in which recitals were also made about the alleged incidents said to have been -3- taken place on 10.05.2013 and 14.05.2013. It has been submitted that the complainant had already taken recourse in settlement of the disputes by filing a suit before the competent civil court and in such circumstances, the criminal complaint which has been instituted against the petitioners was clearly a malafide act on the part of the complainant. Learned counsel has further argued that in the present complaint, a reference has been made with respect to the letter sent to the Superintendent of Police, Hazaribagh, but there are material differences in the content of the said letter as well as complaint case ultimately instituted and the letter addressed to the Superintendent of Police is mainly concentrated on the alleged illegal acts committed by the Officer-in-Charge, Sadar P. S., Hazaribagh. Learned counsel has thus submitted that in the garb of putting pressure upon the petitioners although recourse has been taken by the complainant by filing a civil suit, a criminal complaint has been instituted which has been falsified by the letter addressed to the Superintendent of Police, Hazaribagh as well as the suit instituted by the mother and aunt of the complainant. In this context, reference has been made to the judgment in the case of Inder Mohan Goswami & Anr. Vs. State of Uttaranchal & Ors. reported in (2008) 1 JLJR82(SC).

6. Countering the argument of the learned counsel for the petitioners, Mr. K. K. Singh, learned counsel for the opposite party no. 2 has referred to the solemn affirmation of the complainant and has submitted that specific allegations have been levelled against all the accused persons of trying to grab the land belonging to the complainant by demolishing the boundary wall with the help of the police personnel. It has been submitted that the complaint case clearly discloses a criminal offence as against the petitioner and in such circumstances, considering the limited jurisdiction of the court in a proceeding under Section 482 of Cr.P.C., the present application is liable to be dismissed. Reference in this context has been made to the judgment in the case of M/s Indian Oil Corporation Vs. NEPC India Ltd. & Ors. reported in 2006(4) East Cr. C22(SC) as well as in the case of Union of India & Ors. Vs. Ramesh Gandhi reported in 2012(1) East Cr. C41(SC).

6. In the complaint petition which had been instituted by the complainant - opposite party no. 2 reference has been made to the -4- incidents which are alleged to be taken place on 10.05.2013 and 14.05.2013. In the complaint petition it has also been mentioned with respect to making application for initiating a proceeding under Section 144 of Cr.P.C. at the behest of the complainant. The entire dispute as it seems from the recital of the complaint petition as well as from the perusal of the averments made in the plaint in Title Suit No. 104 of 2013 do seem to revolve around a piece of land. It has been categorically mentioned in the plaint about the incidents which had taken place on 10.05.2013 and 14.05.2013. It has also been stated therein that the cause of action for filing the suit arose on 10.05.2013 and 14.05.2013 when the obstruction was caused by the defendants in the plaintiff's ingress and outgress in the suit land and access to their houses and by demolishing the boundary wall to shift it to the western side to grab the land of the plaintiffs. The initiation of civil suit and institution of a complaint case also suggest that there was a common element with respect to both the cases and that was in relation to the dispute with respect to the land in question. It further appears that although the complainant had availed of the remedy by instituting a suit through her mother and aunt against the petitioners, but the initiation of a complaint case do suggest the malafide intention on the part of the complainant. Moreover, in the complaint petition reference has been made about the communication given to the Superintendent of Police, Hazaribagh through registered post with respect to the

incidents which have been mentioned in the complaint petition, but from the perusal of the letter so written it appears that main allegations have been levelled against the Police Officer Sadar Police Station of abusing, assaulting and intimidating the complainant in active connivance with the accused persons. The communication dated 15.05.2013 does not disclose the active participation of the petitioners and it seems that in the subsequent complaint petition, a story has been developed for implicating the petitioners.

8. Learned counsel for the opposite party no. 2 has referred to the judgment in the case of M/s Indian Oil Corporation Vs. NEPC India Ltd. & Ors. (supra) wherein it has been held that if the allegations are sufficient to constitute an offence, the complaint cannot be quashed. It has also been held therein that the High Court is not concerned with the proof of allegations made in the complaint or ultimate outcome of -5- the trial at that stage. Reference has also been made in the case of Union of India & Ors. Vs. Ramesh Gandhi (supra), wherein paragraph 109 of the judgment in the case of State of Haryana and Others Vs. Ch. Bhajan Lal and others reported in AIR 1992 SC604 has been quoted and which reads as under:

109. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.

9. Mr. Pandey Neeraj Rai, learned counsel for the petitioners has referred to the judgment in the case of Inder Mohan Goswami & Anr. Vs. State of Uttaranchal & Ors. (supra) wherein also the various guidelines made in the case of State of Haryana and Others Vs. Ch. Bhajan Lal and others (supra) has been quoted at paragraph 32 and the same is reproduced:

32. In State of Haryana v. Bhajan Lal this Court in the backdrop of interpretation of various relevant provisions of Cr PC under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the

extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 Cr PC gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this Court made it clear that 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 to 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 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 - 6- 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 Act concerned (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 Act concerned, 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.

10. Although much stress has been made by the opposite party no. 2 with respect to the limited powers to be exercised by this Court under Section 482 of Cr.P.C.,

but there is no hard and fast rule with respect to the cases as to which High Court could exercise its extraordinary jurisdiction. It is not in doubt that the High Court cannot conduct a roving inquiry or sift through the evidence while considering an application under Section 482 of Cr.P.C., though at the same time if the recitals in the complaint/FIR coupled with the surrounding circumstances which may be by way of unimpeachable evidence to suggest absence of culpability on the part of the accused persons, the High Court does not have the power to exercise its jurisdiction under Section 482 of Cr.P.C.

11. As has been discussed above, the entire disputes seems to be with respect to a boundary wall for which a civil suit has been instituted -7- from the complainant's side. The complaint case also clearly reveals the apparent dispute between both the sides. In such circumstances, the initiation of the complaint case is tainted with malafide and has been instituted with malice and ulterior motive and therefore, in such circumstances by applying the principles laid down in the case of State of Haryana and Others Vs. Ch. Bhajan Lal and others, I am inclined to interfere with the criminal proceeding.

12. Accordingly, this application is allowed and the entire criminal proceeding in connection with Complaint Case No. 910 of 2013 pending in the court of Chief Judicial Magistrate, Hazaribagh including the order dated 07.12.2013 passed by the Chief Judicial Magistrate, Hazaribagh by which cognizance has been taken for the offence punishable under Sections 147, 323, 504 & 506 of I.P.C. is concerned, is hereby quashed and set aside. (Rongon Mukhopadhyay, J) R. Shekhar Cp 3

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