

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.13155 of 2012

Arising Out of PS.Case No. -0 Year- null Thana -null District- PATNA

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1. Sudhir Kumar S/O Late Raju Ram Sharma Resident of Mohalla- Karwa Ki Sarai, Mansoorganj, Main Road, Ashok Raj Path, P.S.- Malsalami, Distt.- Patna
 2. Sunil Kumar @ Sunil Kumar Sharma S/O Late Raja Ram Sharma Resident of Mohalla- Karwa Ki Sarai, Mansoorganj, Main Road, Ashok Raj Path, P.S.- Malsalami, Distt.- Patna
 3. Saraswati Devi W/O Late Raja Rma Sharma Resident of Mohalla- Karwa Ki Sarai, Mansoorganj, Main Road, Ashok Raj Path, P.S.- Malsalami, Distt.- Patna
 4. Vijay Kumar S/O Laxmi Prasad Yadav R/O Mohalla- Karwa Ki Sarai, Mansoor Ganj, Main Road, P.S.- Malsalami, Distt.- Patna
 5. Anil Kumar Singh @ Sakta Singh S/O Sidhyanath Singh Resident of Mohalla- Andraghat Maroof Ganj, P.S.- Malsalami, Distt.- Patna
 6. Ved Prakash Jaiswal S/O Late Ram Narayan Lal Resident Of Mohalla- Haziganj, P.S.- Chowk Patna City, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. Vinita Gupta W/O Late Hemant Kumar Resident of Mohalla- Mansoorganj Nakhas, Patna City, P.S.- Malsalami, Distt.- Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shashi Kant Singh

For the Opposite Party/s : Mr. Arun Kumar Pandey(App)

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 04-02-2015

Heard learned counsel for the parties.

2. By order dated 22.11.2012 the proceeding of Complaint Case No. 362 of 2011 was quashed by this Court. However, the matter travelled up to the Hon'ble Supreme Court which remanded the matter to the High Court on the ground that the order was laconic and no reasons had been assigned for quashing the proceeding.

3. The date of occurrence in the complaint dated 16.04.2011



is between 1982 to 08.02.2011 i.e. 9 years. The allegations in the complaint were that on 08.02.2011 the complainant learnt that the wall of the complainant had been demolished by the accused persons and which had caused a loss of Rs. 10,000/- to her. Also the bricks etc were being removed despite the intervention of the local police. The accused persons had reportedly taken time for compromising when they appeared before the Officer-in-charge. The Sub-Divisional Judicial Magistrate, Patna City had called for a report from the police station in a proceeding under Section 144 Cr. P.C. The further allegation was that the accused persons had been deceiving right since 1982 in which accused Vijay Kumar son of Laxmi Prasad Yadav was also involved. On 08.02.2011 at about 6 pm when she reached the place of occurrence she found that the accused persons were sending the bricks towards their side and when she protested Sudhir Kumar caught her hand whereas accused Saraswati Devi snatched her ear tops. This occurrence was seen by a number of witnesses on whose appearance the accused left.

4. The reasons for the occurrence was that the accused persons were trying to capture a certain piece of land which had fallen in her share in 1942. Further Sudhir Kumar Petitioner no. 1 had filed an application before the Patna Municipality stating wrong facts. The occurrence of 25.01.2011 was reported to the Officer-in-Charge and local police station and Dy. S.P. Patna City where the matter was pending. It was relevant that accused never attempted taking



possession of the said land in the life time of late Banarsi Lal Sharma her father-in-law and it was only when he died they started propagating that the land had been registered by him in their favour in the year 2001 at Bombay whereas such registry was not valid in Bihar. The said document was witnessed by Vijay Kumar, Anil Kumar, Petitioners no. 4 and 5 and Ved Prakash Jaiswal. The accused persons were evidently wrong since the said Banarsi Lal Sharma was unwell since 1998 and he was always accompanied by his son and daughter-in-law i.e., the husband of the complainant and herself and her sons for medical treatment. The further allegation was that the accused persons were experts in making false signatures. Further accused Sudhir Kumar Petitioner no. 1 could not have derived the lands through sale deeds executed by Banarsi Lal Sharma, as claimed by him, since during his life time he had given Power of Attorney to his only son Hemant Kuamr husband of the complainant since 1995 and after his death to her being his daughter-in-law his grandsons Sachin Kuamr and Avinit Kumar (her sons). There is nothing to substantiate the fact that Banarsi Lal Sahrma had ever executed the Sale Deed in favour of Sudhir Kumar and in fact Sudhir Kumar with the help of Vijay Kumar got the son of Banarsi Lal Sharma killed and made it appear like an accident.

5. The reason for delay for filing the complaint was that she was waiting for action by the police.

6. On perusing the complaint, I find that the narrative is very



disjointed. However what I could gather from it is that on 25.01.2011 i.e. three months prior to filing of the complainant there was a complaint with regard to the accused persons having broken down the wall and caused a loss of Rs. 10,000/- to her. It also speaks of initiation of a proceeding under Section 144 Cr. P.C. The next occurrence is of 08.02.2011 i.e. about 2 months earlier when she went to protest on the theft of the bricks at which she was caught hold of by accused Sudhir Kumar and Sunil Kumar Petitioners no. 2 and 3 whereas their mother Saraswati Devi snatched away her ear tops. The rest of the allegation is with regard to a Sale Deed executed on 12.04.2001 (date is not mentioned in the complaint but in the Title Suit) having been executed allegedly in favour of the accused Sudhir Kumar Petitioner no. 1 which was under challenge by her.

7. The submission of the Petitioners was that before present complaint was filed, the Complainant had filed Title Partition Suit No. 198 of 2011 before Sub Judge, Patna City where the petitioners no. 1 and 3 were defendants and had appeared and filed their written statement. The prayer in the Title Suit was for cancellation of the sale deed which has been mentioned in the complaint petition.

8. In the written statement the petitioners had averred that registered sale deed had been executed by Banarsi Lal Sharma on 12.04.2001. They further submitted that the claims of the complainant with regard to claims on the land, was also unjustified in view of the sale deed.



9. On the other hand, counter affidavit has been filed on behalf of the opposite party no. 2 wherein it has been submitted that the sale deed is evidently false since at the point of time the Petitioners' claim was that Banarsi Lal was aged about 75 years but documents described the present age as 88 years. The further submission is that the established principle of law which has been laid down in the matter of **Ms. Medchl Chemicals & Pharma P. Ltd v. M/s Biological E. Ltd.** reported in **2000 (3) PLJR 56** is that merely because a civil remedy was available it did not oust the jurisdiction of a criminal Court. Similar was a decision reported in the matter of **Nar Singh Pal v. Union of India** reported in **2000 (3) PLJR SC 64**.

10. There cannot be any dispute that even while a civil proceeding is pending, the criminal Court will have jurisdiction to try the criminal offences if made out. This Court while quashing the application had looked into the documents and in exercise of its extraordinary jurisdiction, quashed the proceedings in order to do justice led on the ground that at best civil dispute is made out.

11. However, now it proceeds to record its reasons in some detail. I find that in the complaint petition there is mention of an occurrence of 25.01.2011 and 08.02.2011. However, there is no explanation for the delay in lodging the complaint after 2/3 months of the two occurrence i.e. of 16.04.2011. I also find that after this complaint petition a title suit was also filed on 24.06.2011 for the same cause of action.

12. The grievance of the complainant with regard to the occurrence dated 25.01.2011 and 08.02.2011 is not only fit to be disbelieved on account of delay in reporting but also because I find that the core issue was the question of title over the land in question. Whereas the complainant claims it still belongs to her being the daughter-in-law of Bansrshi Lal Sharma the Petitioners claim the same on the basis of the sale deed executed by Mr. Sharma in the year 2001 i.e., 10 years earlier. Whether the sale deed is forged or genuine is already subjudice before a Court of competent jurisdiction and there being no expert opinion in its regard in the present complaint the allegation is evidently speculative.

13. In the nature of dispute Civil Court would be undoubtedly much more competent to adjudicate this matter where the scale of preponderance of probabilities is much higher than in a criminal case where the onus is completely on the prosecution to prove its case beyond all reasonable doubt.

14. Hence the application for the reasons aforesaid is allowed. The order dated 22.11.2012 passed in Complaint Case No. 362 of 2011 is hereby set aside.

(Anjana Prakash, J)

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