

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.12607 of 2013

Arising Out of PS.Case No. -3216 Year- 2008 Thana -WEST CHAMPARAN COMPLAINT
District- -

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Saifullah Khan @ Bhuto Khan

.... Petitioner/s

Versus

State of Bihar & Anr

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.

For the Opposite Party/s : Mr. S.D. Singh Yadav(App)

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

- 7 30-07-2015 **1.** Heard the learned counsel, Mr. Bimlesh Kumar Pandey, for the petitioner. Heard the learned A.P.P. for the State and the learned counsel, Mr. Ansul, on behalf of the Opposite Party No.2.
- 2.** In spite of repeated time granted to the opposite party No.2, the learned counsel for the opposite party No.2 has not filed counter affidavit to the application.
- 3.** This Criminal Misc. application has been filed by one of the co-accused for quashng the order dated 08.09.2009 passed by the learned Judicial Magistrate Ist Class, Bettiah in connection with T.R. No.1565 of 2012 arising out of complaint case No.3216 (C)/2008 whereby the learned trial Court has issued summons after taking cognizance.
- 4.** It appears that the complainant, Haji Hashim



Raza had filed the aforesaid complaint case alleging that he is the Secretary of Yateemkhana Badria, Bettiah. One Bibi Mohammadin had donated 5 katha land of plot No.197 of khata No.2 in the name of Yateemkhana by registered deed dated 12.07.1995. The allegation against the petitioner, Bishwanath Prasad is that both of them got executed two sale deeds from Imamuddin Khan, the other co-accused. On the basis of this allegation, the Court below has taken cognizance under Section 419 and 468 IPC.

5. The learned counsel for the petitioner submitted that in fact the allegation made in the complaint case are of pure civil nature and the dispute relates to the title of either Bibi Hamidan or the vendor of the present petitioner, i.e., Md. Imamuddin Khan. This question cannot be decided in this complaint case. The vendor of the petitioner has sold his share in the property, therefore, whether he had the right, title to transfer valid title in favour of the petitioner is a question which is of pure civil nature.

6. The learned counsel for O.P. No.2 and A.P.P. objected the prayer and submitted that at this stage, this question cannot be decided.

7. Perused the impugned order and the complaint

application, Annexure '1'. The only allegation made in the complaint case is that this petitioner along with co-accused, Bishwanath Prasad has purchased the land from the co-accused Md. Imamuddin Khan. Except this there is no allegation against the petitioner.

8. The Hon'ble Supreme Court in the case of *Md. Ibrahim Vs. State of Bihar (2009) 8 SCC 751* has held that **“this Court has time and again drawn attention to the growing tendency of the complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused or out of enmity towards the accused, or to subject the accused to harassment. Criminal Courts should ensure that proceedings before it are not used for settling scores or to pressurize parties to settle civil disputes. But, at the same time, it should be noted that several dispute of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences even if they also amount to civil dispute.**

9. In the present case as stated above except the aforesaid allegation, there is nothing against the petitioner. Moreover, it is

admitted fact that complainant had already compromised the case with the other co-accused, Bishwanath Prasad.

10. In view of the above fact and circumstances of the case that the dispute raised in the complaint case is of purely civil nature and that even if the allegation made in the complaint case is taken to be true in its entirety then also no cognizable offence is disclosed and, therefore, this is a fit case where the jurisdiction under Section 482 Cr.P.C. should be exercised. Accordingly, this Cr. Misc. application is allowed and the impugned order taking cognizance is hereby quashed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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