

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.15270 of 2014

Arising Out of PS.Case No. -899 Year- 2013 Thana -GOPALGANJ COMPLAINT CASE District-
GOPALGANJ

- =====
1. Md. Talib son of Late Sheikh Slauddin
 2. Aabid Ali son of Late Alauddin
 3. Akhtar Ali son of Late Alauddin,
- All are residents of Village- Fatha, P.S.- Gopalganj, District Gopalganj

.... Petitioner/s

Versus

1. The State of Bihar
2. Shamim Ahmad son of Late Md. Isha, resident of Village- Shahbajwa, P.S.-
Gopalganj, District- Gopalganj

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Md.Sufiyan, Advocate
For the State : Mr. Parmeshwar Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 29-06-2015

This application under section 482 of the Code of Criminal Procedure is directed against the order dated 12.12.2013 passed by the learned Chief Judicial Magistrate, Gopalganj in Complaint Case No.899 of 2013 whereby finding a prima facie case to be made out under sections 420, 467, 468 and 471 read with 34 of the Indian Penal Code, the petitioners have been summoned to face trial

2. According to the allegations made in aforesaid complaint filed by opposite party no.2 Shamim Ahmad against the petitioners, a registered deed of exchange was executed on 31.12.1971 between Sk. Kismat (for the sake of clarity hereinafter called the 'Party of the First



Part') and Sk. Salauddin and Sk. Allauddin (for the sake of clarity hereinafter called the 'Parties of the Second Part'). The Party of the First Part was the grand father of the complainant whereas the parties of the Second Part were the ancestors of the petitioners Md. Talib, Aabid Ali and Akhtar Ali. In pursuance of the aforesaid agreement certain plots of land as described in the complaint were exchanged between the parties. Each of the parties of the First and Second Part came in absolute right, full power and absolute authority over the properties allocated to him. Since then each of the parties of the First and the Second Part and their descendants was peacefully and quietly occupying, possessing and enjoying the scheduled property allocated to him. Subsequently, when the complainant made an enquiry in this regard, he came to know that the accused persons (petitioners) conspired together with the officials of Circle Office and got a Jamabandi created in their names in respect of some of the plots of the land which were allocated to his grand father through the aforesaid registered deed of exchange. When the complainant confronted the accused persons in this regard, they expressed repentance and agreed to execute a deed of relinquishment. When they were asked to execute such deed, they denied to do so. In sum and substance, the allegation of the complainant is that the accused persons managed to get Jamabandi created in their favour in the revenue record in respect of

the plots which were owned and possessed by the complainant.

3. Heard learned counsel for the petitioners and learned counsel for the State. Despite valid service of notice, none appeared on behalf of opposite party no.2.

4. Learned counsel for the petitioners has submitted that even if the entire allegations made in the complaint are taken to be true on its face value, the ingredients of the offences punishable under Sections 420, 467, 468 and 471 read with 34 of the Indian Penal Code would not be attracted in the present case. According to him, Jamabandi neither creates nor extinguishes right of the parties. There is no allegation that any forgery was committed by the petitioners in the revenue records. There is also no allegation that any forged document was ever produced by the petitioners before the revenue authority. It has further been contended that in the nature of dispute raised in the present application, the complainant has a remedy of appeal and revision under the Bihar Land Mutation Act, 2011 for the redressal of his grievance. According to him, a purely civil dispute has been given a colour of criminal case. He has further contended that the complainant has not produced any chit of paper or document to substantiate the allegation made by him. The present complaint has been filed just to deprive the petitioners from getting the compensation on account of the fact that the plots in question are

likely to be State Government for construction of public road.

5. Learned counsel for the State has submitted that the case arises out of a complaint and the State is a formal party. He does not seriously dispute the contention of the learned counsel for the petitioners.

6. Regard being had to the facts and circumstances of the case, since there is no allegation that the petitioners forged any document or got the Jamabandi created in their names on the strength of any forged document, I am of the opinion that the ingredients of the offences alleged are wanting in the present case.

7. In that view of the matter, the application is allowed. The impugned order dated 12.12.2013 passed by the learned Chief Judicial Magistrate, Gopalganj in Complaint Case No. 899 of 2013, so far as it relates to the petitioners, is quashed.

(Ashwani Kumar Singh, J)

Md.S./-

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