

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.8650 of 2009

Arising Out of Complaint Case No.114 Year- 1998 District- PATNA

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Ajay Prasad, son of late Chamru Lall, r/o Satyanarin building, Exhibition Road,
P.S. Gandhi Maidan, Distt. Patna.

.... Petitioner/s

Versus

1. The State of Bihar
2. Girdhari Prasad, son of late Chamrul Lall, Thatheri, resident of Mohalla
Thatheri Bazar, P.S. Pirbahore, Distt. Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Anjani Kumar Sinha, No. 1, Adv.

For the State : Mr. Rabindra Pd., Adv.

For the Opposite Party No. 2 : Mr. F. Ahmad, Adv.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 10-07-2015

Heard learned counsel for the Petitioner and the State.

The Petitioner seeks quashing of the order dated 23.1.2009 by which the Additional Sessions Judge 11, Patna, in Criminal Revision No. 527 of 1999 has affirmed the order of cognizance dated 21.9.1999 passed by the Judicial Magistrate, Patna City in Complaint Case No. 114 of 1998.

The case of the Complainant is that Chamaru Ram died leaving behind his widow and three sons namely, the Petitioner, the Complainant and one Murari Lal and married daughters. All the sons became separate in mess but the properties were joint. Apart from other lands, there was one piece of land in Fatuha in the District of Patna which the accused persons by forging a Power of Attorney

dated 31.3.1995, executed a registered sale deed on 5.4.1995 in favour of the accused Premchand and thus defalcated an amount of Rs.1,00,000/-. Subsequently, the said Premchand filed a collusive Title Suit 108 of 1995 wherein the Petitioner impleaded himself as defendant but did not implead the Complainant there. It was only later Complainant was impleaded a Party.

It has been submitted on behalf of the Petitioner that he and the Complainant are brothers and there appears to be a bona fide land dispute between them. A Title Suit has been filed for adjudicating the same issue and hence, the present Complaint is a multiplicity of proceeding.

On the other hand, the counsel for the Complainant submits that since the Petitioner had forged a Power of Attorney, he should be prosecuted criminally.

Having considered that there is a Title Suit where the issue of validity/legitimacy of the Power of Attorney will be considered, I would be inclined to hold that the continuance of the present Complaint would be utterly unnecessary.

Hence, the application is allowed and the Proceeding including the order dated 23.1.2009 passed by the Additional Sessions Judge X1, Patna, in Criminal Revision No. 527 of 1999 and the order of cognizance dated 21.9.1999 passed by the Judicial Magistrate,

Patna City in Complaint Case No. 114 of 1998, are hereby set aside.

However, this order shall not bear on any Civil Suit.

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(Anjana Prakash, J)