

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.45094 of 2012

=====

Ganesh Prasad Singh & Anr.

.... Petitioner/s

Versus

State of Bihar & Anr

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Awadhesh Kumar Pandit

For the Opposite Party/s : Mr. Jharkhandi Upadhyay(App)

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 16-04-2015 Heard the learned counsel for the petitioners and learned
counsel appearing on behalf of the State.

This Cr. Misc. application has been filed by the petitioners under Section 482 of the Code of Criminal Procedure praying for quashing the order dated 20.08.2010 whereby the cognizance has been taken by the learned Judicial Magistrate, Ist Class Sasaram, Rohtas under Section 420 of IPC in complaint case No.1429 of 2009 and the order dated 19.01.2012 passed in Cr. Revision No.262 of 2010 by Sessions Judge, Sasaram, Rohtas.

It appears that on the basis of the complaint filed by one Ram Nath Srivastava, the witnesses were examined under Section 202 Cr.P.C. The allegation against the petitioner is that they are members of housing society and the petitioners are the secretary and president of the society. The complainant and other members



paid Rs.8000/- each in cash for maintenance of the housing society but the petitioners misappropriated the fund given by the members. After the examination of the witnesses, cognizance was taken by the Court below. Against that order, the petitioners filed criminal Revision No.262 of 2010 before the Sessions Judge, Rohtas at Sasaram. The revisional Court found that the learned Magistrate has taken into consideration the allegation in the complaint petition as also the evidence adduced in support of it and after applying judicial mind and analyzing the evidence has taken the cognizance and accordingly dismissed the revision application.

The learned counsel for the petitioner submitted that earlier without examining the witness, the Court was proceeding, therefore, objection was filed by the petitioners but the Court below refused to entertain the objection filed by the petitioner. The petitioners then challenged the said order before this Court in Criminal Misc. No.10080 of 2014 and that order was quashed by this Court. Thereafter, nothing has happened and still today no order has been passed as the Court is vacant. According to the learned counsel, the petitioners have been falsely implicated in this case and, therefore, the order whereby cognizance has been taken under Section 420 should be quashed.

The learned counsel further submitted that the cognizance has been taken by the Court below on the basis of the evidences of the witnesses who are not named in the complaint case and the witnesses who have been named in the complaint case have not been examined.

Perused the order passed by the trial Court taking cognizance and the order passed by the revisional Court.

So far the submission of the learned counsel for the petitioner that they have been falsely implicated in this case is concerned, it is a question of fact that can be gone on the basis of the evidences that may be produced by the complainant and defence witnesses that may be produced by the petitioner. While exercising inherent jurisdiction under Section 482 of the Code of Criminal Procedure, the High Court cannot convert itself into an appellate Court and re-appreciate the evidence to investigate as to whether the petitioners are guilty or not. So far the submission of the learned counsel that the cognizance has been taken by the Court below on the basis of the evidences of the witnesses not named in the complaint case is concerned, it may be stated here that this can at best be said to be an irregularity and not illegality. It is settled principle of law that on strong suspicion also, the cognizance can be taken.

The revisional Court also found that the trial Court after applying judicial mind to the facts of the case and the evidences examined by the complainant has taken cognizance, therefore, it is not a case that any grave injustice has been done or that by issuing process, the Court below has abused the process of Court.

The learned counsel for the petitioner submitted that title suit has been filed by the complainant for direction to execute the sale deed in favour of the complainant and, therefore, also the case appears to be of civil nature. So far this point raised by the petitioner also, in my opinion, is not relevant at this stage and on the basis of this fact, the order taking cognizance cannot be quashed. Accordingly, this application under Section 482 Cr.P.C. is hereby rejected.

(Mungeshwar Sahoo, J)

Sanjeev/-

U		T	
---	--	---	--