

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.43779 of 2011

Arising Out of PS.Case No. -135 Year- 2005 Thana –Ghanshyampur, District- DARBHANGA

Col (Retired) Bijay Kant Jha, s/o late Anant Narayan Jha, resident of village- Rasiyari, Police Station- Ghanshyampur, District- Darbhanga

.... Petitioner/s

Versus

- 1. The State of Bihar
- 2. Lakshman Jha, s/o late Anant Narayan Jha
- 3. Arun Kumar Jha, s/o Sri Lakshman Jha
- 4. Suman Kumar Jha, s/o Sri Lakshman Jha
- 5. Raman Kumar Jha, s/o Sri Lakshman Jha

All are resident of village- Rasiyari, Police Station- Ghanshyampur, District- Darbhanga

.... Opposite Party/s

with

Criminal Miscellaneous No. 40636 of 2011

Arising Out of PS.Case No. -135 Year- 2005 Thana -null District- DARBHANGA

Col (Retired) Bijay Kant Jha, s/o late Anant Narayan Jha, resident of village- Rasiyari, Police Station- Ghanshyampur, District- Darbhanga.

.... Petitioner/s

Versus

- 6. The State of Bihar
- 7. Lakshman Jha, s/o late Anant Narayan Jha
- 8. Arun Kumar Jha, s/o Sri Lakshman Jha
- 9. Suman Kumar Jha, s/o Sri Lakshman Jha
- 10. Raman Kumar Jha, s/o Sri Lakshman Jha

All are resident of village- Rasiyari, Police Station- Ghanshyampur, District- Darbhanga

.... Opposite Party/s

Appearance :

(In Cr.Misc. No. 43779 of 2011)

For the Petitioner/s : Mr. Durga Nand Jha, Adv.

For the State : Mr. Kr. Priya Ranjan, A.P.P.

For the Opposite Parties : Mr. Awadhesh Kumar, Adv.

(In Cr.Misc. No. 40636 of 2011)

For the Petitioner/s : Mr. D.N. Jha, Adv.

For the State : Mr. Kumar Priya Ranjan, A.P.P.

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

ORAL JUDGMENT

Date: 03-02-2015

This application has been filed by the same Petitioner and hence heard together. Whereas in Cr. Misc. No. 43779 of 2011 he is aggrieved with the order of cognizance passed by the Sub Divisional Judicial Magistrate, Biraul, in Ghanshyampur P.S. Case No. 135 of 2005 under limited Sections even though charge sheet was submitted under certain other Sections. In Cr. Misc. 40636 of 2011, he challenges the Revisional order which had set aside the order of cognizance on the ground of limitation.

The case of the Informant is that while he was in service, he had entrusted accused Lakshman Jha, his brother, with jewellery and on his inducement remitted him a sum of Rs.25,000/- by way of Demand Draft in favour of the accused Arun Kumar Jha for developing the medicine business. During his entire tenure, he remitted around 14,60,439/- by way of Demand Drafts and cash for running the Brick Kiln, purchase of three tractors and one mini bus. However, after retirement, when he came back to the village, he found that all the joint property has been misappropriated by the accused persons by committing breach of trust.

The Opposite Party No. 2 died during pendency of the application where as rest of the Opposite Parties are his sons meaning thereby the nephews of the Petitioner.



The submission of the Petitioner is that the Magistrate committed an error in taking cognizance only under limited Sections. Further submission is that the Revisional Court should not have entertained a composite petition filed on behalf of the accused persons against the order of cognizance as well as non- discharge. They should have filed two separate petitions. The order of cognizance was not barred by limitation since the matter was already pending before a Court of law where the Complaint was filed well within the time.

On the other hand, the counsel for the Opposite Parties submits that even conceding the point of limitation when the facts of the case do not make out a criminal offence, the continuance of the Proceedings is bad in law. Submission is that at best a civil dispute is made out in the facts of the case. Where there was already a written partition between the brothers, such an allegation appears to be trumped-up only with a view to harass the family. The Revisional order is well considered and reasoned having been passed after taking note of the various decisions on the point.

On going through the First Information Report, I find that the allegation is that the Informant had disbursed huge amount of money during his service period to his brother who was residing in the village with an understanding that the money would be spent in a certain manner. The point is whether the Court will be in a position to

adjudicate whether the money was well spent or not and as per the wishes of the Informant. Financial transactions between two brothers are not capable of being scrutinized by a Criminal Court. Even if the Brick Kiln had been transferred in the name of the heirs of the Opposite Party No. 2, it would be difficult for any Court to look into the criminal aspect of such an act. Also even if the Complaint is taken on its face value, no case of cheating or misappropriation is made out. In my view, at best a civil dispute is made out in the facts of the case.

Hence, in view of such, the applications are dismissed.

(Anjana Prakash, J)

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