

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.38148 of 2012

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1. Indrasan Devi, Wife of Purushottam Singh.
2. Sudama Devi, Wife of Deen Dayal Singh.
3. Urmila Devi, Wife of Maheshwar Prasad Singh.
All residents of village Murha Ghat, P.S. Kanhauli, District Sitamarhi.
.... Petitioners

Versus

1. The State of Bihar.
2. Shri Amarnath Gupta, Son of Shri Rajendra Prasad Gupta, resident of Village Gobardhanpur, P.S. Muzaffarpur Sadar, District Muzaffarpur at present posted as Prakhanda Vikas Padadhikari, Sonbarsa, P.S. Sonbarsa, District Sitamarhi.
3. Officer-in-Charge of Kanhauli Police Station, District Sitamarhi.
.... Opposite Parties

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Appearance :

For the Petitioners : Sri Yogendra Mishra, Advocate
Sri Raghunath Kumar, Advocate
For the Opp. Parties : None.

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CORAM: HONOURABLE MR. JUSTICE DHARNIDHAR JHA

ORAL JUDGMENT

Date: 26-02-2015

The present petition has been filed by the petitioners seeking quashing of the entire proceedings of Case No. C/I/700/2011 including the order dated 15.06.2011, passed by the learned Chief Judicial Magistrate, Sitamarhi in that case.

2. Some of the facts are mostly undisputed. A probate case bearing No. 11 of 2007 was pending before the learned Additional District Judge-cum-Presiding Officer, Fast Track Court-VII, Sitamarhi and by an order passed in that probate petition, the Block Development Officer, Sonbarsa was appointed as administrator. The order was within the knowledge of all parties and during the subsistence of that order dated 02.06.2011 passed in



the above noted probate case, the petitioners are said to have executed the sale deeds in respect of some part of the properties which was the subject matter of the Will to be probated. It is not disputed as appears from the copy of order dated 02.06.2011 passed in the above said Probate Case No. 11 of 2007 that after appointing the Block Development Officer, Sonbarsa as the administrator, letters were sent to the Registrar and other authorities not to register any document in respect of the properties. In spite of the communication of the order and order of appointment of the Block Development Officer as administrator, the petitioners had executed the sale deeds in respect of land pertaining to Khata No. 160 Khesra No. 82 Area 33.5 decimals situated at village Murhaghat, Sonbarsa, Sitamarhi.

3. The matter was brought into the notice of the probate court and the probate court had passed an order on 02.06.2011 directing the Block Development Officer, Sonbarsa to file a complaint for commission of offences under Sections 183, 186 and 188 of the Indian Penal Code.

4. What appears further undisputed is that in view of the direction issued by the probate court, the complainant Amarnath Gupta Opposite Party No. 2 herein, who happened to be the Block Development Officer, Sonbarsa, filed petition of complaint bearing

No. C/I/700/2011 and the same was made over to Sri Jitendra Kumar Dubey, Sub-Judge-I and he by order dated 15.06.2011 directed the concerned police station to investigate the allegations under Section 156(3) Cr.P.C.

5. While addressing the Court, Sri Yogendra Mishra, Advocate appearing on behalf of the petitioners submitted that no offence under Sections 183, 186 or 188 of the Indian Penal Code was made and the probate court was not a court, strictu sensu, and it did not have the power to direct the filing of the First Information Report. It was emphasized that the provisions of the Indian Succession Act did not treat the District Judge or any court in that behalf to be a "court" and, as such, the filing of the complaint was baseless.

6. Section 340 Cr.P.C. relates to the procedure to be followed in order to holding an enquiry if any court is of the opinion that it was in the interest of justice that an enquiry be made as regards the commission of any offence in or in relation to a proceeding pending before that court. The offences in respect of which an enquiry could be held under Section 340 Cr.P.C. are enlisted in Section 195 Cr.P.C. and as may appear, offences under Sections 172 to 188 are such offences commission of which in or in relation to the proceedings in court may be the subject matter of an



enquiry by a court under Section 340 of the Indian Penal Code. However, Sri Mishra was disputing that the court which takes up proceedings under Chapter IV of the Indian Succession Act was no a court. I have examined that issue from that particular angle. The proceedings have to be taken up by the District Judge as regards the granting or revoking of probates and letters of administration within his district. Besides the District Judge, the High Court with the prior sanction of the State Government may also appoint officers other than the District Judge as an officer to grant probate and letters of administration in non contentious cases as appears from Section 265 of the Indian Succession Act. As regards the proceedings of granting or revoking probate or letters of administration, Section 268 says that the proceedings shall except if otherwise provided has to be regulated so far as the circumstances of the case permit by the Code of Civil Procedure.

7. Section 340 (4) Cr.P.C. says that the word "Court" shall have the same meaning as in Section 195. Section 195(3) Cr.P.C. says that the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of Section 195. It hardly requires to be pointed out that Bengal, Agra, Assam Civil Courts Act provides for



establishment of four classes of civil courts. Those are the courts of the District Judge, the Additional Judge, the sub-ordinate Judge and the Munsif. Thus, the District Judge is a civil court established under a competent law. I have already referred to the provisions of Chapter IV of the Indian Succession Act which leaves no manner of doubt that the District Judge while taking up the proceedings either of granting or revoking probates and letters of administration, acts as a court and is supposed to follow the procedures laid down for hearing a suit or proceedings or a case under the Code of Criminal Procedure. Thus, it is a civil court and the provisions of Section 340 read with 195 Cr.P.C. are duly applicable to proceedings which are pending before it.

8. Undisputed facts I have already narrated. The facts leave no manner of doubt that there was an order passed by the probate court appointing the Block Development Officer, Sonbarsa as the administrator and that order had divested the parties, legally speaking, from the possession of the land as also to a larger extent of their title as regards the properties covered by that proceedings. It is true that an enquiry is envisaged to be held under Section 340 of the Act but there is no bar if any person or an authority who might be aggrieved by the acts of a person and who finds the acts committed to be falling in the category of defined offence should

not file a complaint. The complaint petition was filed and it was within the discretion of the court to direct the investigation as regards the allegations made through the petition of complaint. As such, I do not see any illegality if the Block Development Officer, Sonbarsa had filed the complaint petition and the same had been sent for investigation by the concerned court to the police.

9. The petition appears of no merit and the same is dismissed.

(Dharnidhar Jha, J.)

Sanjay/N.A.F.R.

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