

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38133 of 2012

Arising out of PS.Case No.-45 Year-2008 Thana-Lalganj District-VAISHALI (HAJIPUR)

- =====
1. Harinath Pandey, Son of Jit Narain Pandey, Resident of Village Warishpur, P.S. Bhagwanpur, District Vaishali.
 2. Rajdeo Rai, Son of Late Bishu Rai, Resident of Village Kirathpur, P.S. Bhagwanpur, District Vaishali.
 3. Rakesh Kumar Sharma, Son of Ram Chandra Sharma.
 4. Awadhesh Kumar, Son of Ram Chandra Sharma.
 5. Santosh Kumar Sharma, Son of Sitaram Sharma.
- Petitioners No. 3 to 5 are Residents of Village Kailikand, P.S. Bhagwanpur, District Vaishali.

.... Petitioners

Versus

1. The State of Bihar.
2. Anil Kumar @ Suresh Singh, Son of Harendra Prasad Singh, Resident of Village Raghunathpur Sahatha, P.S. Bhagwanpur, District Vaishali.

.... Opposite Parties

=====

Appearance :

For the Petitioners : Sri Ajay Kumar Thakur, Advocate
Sri Nitesh Kumar, Advocate
For O.P. No. 2 : Sri P.N. Shahi, Sr. Advocate
Sri Mritunjay Kumar, Advocate
Sri Ravindra Kumar, Advocate

=====

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

ORAL JUDGMENT

Date: 27-02-2015

After having heard the learned counsel for the petitioners and after having gone through the connected records, I find it very difficult to uphold the contention of the petitioners that their vendor Smt. Daulati Devi was really holding some interest if not complete title, in the disputed properties which were conveyed by her to the petitioners by the registered deed of sale in question. But the bonafide stand of the petitioners was so forcefully placed before me by the learned counsel that I was caught up in two minds as regards the question of petitioners being bonafide purchasers from a bonafide

title holder. An appropriate prosecution has never to be scuttled out. Likewise, a prosecution which may ultimately fail on account of the real factual position to be placed before the Court in due course, may also appear ultimately an abuse of the process of the Court.

2. Keeping that in view, I direct the trial court, i.e., the Judicial Magistrate, 1st Class, Vaishali at Hajipur who is seized with trial of G.R. Case No. 1058 of 2008, arising out of Lalganj P.S. Case No. 45 of 2008 to frame the charges and take evidence, firstly, of the informant Anil Kumar @ Suresh Singh and thereafter his other family members if they are cited as witnesses in the charge sheet and then to decide as to whether it could be a case of bonafide purchase from a person who is holding real interest in the property and if the court finds that on evidence it appears that the sale and purchase was truly transacted in between the petitioners and their vendor with further finding that the vendor was holding some interest in the property then the proceeding shall terminate there in the acquittal of the accused.

3. The petition stands disposed of.

4. If any stay was granted by this Court, the same shall stand vacated.

(Dharnidhar Jha, J.)

Sanjay/-

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