

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.28714 of 2012

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1. Smt. Sushila Devi W/O Shri Yogendra Prasad Singh R/O Village-
Ukhain Tola Prem Hata, P.S.- Pachrukhi, District- Siwan

2. Yagendra Prasad Singh S/O Late Sugriv Singh R/O Village- Ukhain Tola
Prem Hata, P.S.- Pachrukhi, District- Siwan

.... Petitioner/s

Versus

1. The State Of Bihar

2. Bangali Bhagat, son of late Acharaj Bhagat R/o village Kashila, P.S.
Arhaw Distt. Siwan at present R/o village Pakari Bangali, P.S. Siwan
Mofassil, Distt- Siwan

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Chandra Kant

For the Complainant/s : Mr. Rajendra Narain, Sr. Advocate

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**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**

CAV ORDER

4 03-04-2015 1. This application under Section 482 of the Code
of Criminal Procedure, 1973 has been filed seeking quashing
of an order dated 09.03.2011 passed by Sri D. Kumar,
learned Judicial Magistrate Ist Class, Siwan in Complaint
Case No. 842 of 2009 whereby and whereunder he has taken
cognizance of the offences punishable under Sections 465,
468, 471 and 120B of the Indian Penal Code and issued
summons to these petitioners.

2. The quashing of the order has been sought on
the ground that the dispute between the parties constitutes

only a civil dispute and not any criminal offence so far as these petitioners are concerned as the institution of the complaint case on the basis of which the cognizance has been taken, is gross abuse of the process of the Court.

3. As per the complaint case, the complainant is said to have purchased land, measuring 1 Katha 4 and half dhur appertaining to Khata no. 97 Survey Plot No. 403. Accused Srimati Madhuri Sinha (none of these petitioners) had also purchased land in the east side of complainant's land and because the land which the complainant had purchased was narrow and insufficient for the purpose of construction of house, the complainant and said Madhuri Sinha entered into an agreement for exchange of land having an area of 9 dhurs through registered deed of exchange/sale. Allegedly, subsequently, therefore, certain forgery was committed by accused no.1 Madhuri Sinha inasmuch as, she got mentioned, with the help of katib, a 7 feet passage in the north-east side though there was no agreement between the parties with respect to said passage. It is further alleged that a Panchayati was convened to



resolve the dispute, in course of which the accused no.1 Madhuri Sinha is said to have stated that she had mistakenly sold 2 katha of land to accused no.2 (petitioner No.1 herein). Allegedly, they agreed before the members of the Payanchati that they would be executing the deed of ladavi in favour of the informant but they subsequently refused to do so.

4. The Complaint Case No. 842 of 2009 was sent to the police for investigation under Section 156(3) of the Code of Criminal Procedure whereafter First Information Report was registered vide Siwan P.S. Case No. 113 of 2007. The police after completing investigation submitted final report to the effect that it was purely a civil dispute between the parties.

5. The complainant, who is the petitioner in the present application had filed a protest petition in the meanwhile. The learned Magistrate Ist Class, Siwan proceeded on the basis of said protest petition. The complainant was examined on solemn affirmation and he got two witnesses examined in support of his case



whereafter, learned Judicial Magistrate Ist Class, Siwan took cognizance of the offences alleged by the impugned order dated 09.03.2011 which is Annexure-4 to the present application. By the impugned order dated 09.03.2011, he has also issued summonses to the accused persons for their appearance. It is the plea of the petitioners that allegation if any, in the complaint petition, is against Madhuri Sinha, who has been made accused no.1 against whom it is alleged that she had decided to exchange 9 dhurs of land with the complainant and there is absolutely no allegation against these petitioners in the complaint case which can be said to be constituting offence under various provisions of the Indian Penal Code.

6. Mr. Chandra Kant, learned counsel appearing on behalf of the petitioners has referred to the impugned order taking cognizance and has submitted that the petitioners are alleged to have participated in the Panchayati said to have been held on 23.3.2007. There is no role alleged against him, even if the allegations as contained in the complaint petition, are treated to be true, in

preparation of the deed of exchange dated 15.5.1998. The allegation against the petitioner no.1 is that she executed a deed for agreement of sale with respect to 2 dhurs of land in favour of petitioner no.1.

7. In my opinion, the allegations, made in the complaint case, even if they are taken to be correct, do not constitute any criminal offence against these petitioners for the offences punishable under Sections 420, 467, 468 and 471 of the Indian Penal Code as there is no allegation that they were instrumental in forging any documents or committing any act of cheating.

8. This is not in dispute that complainant has filed a title suit also vide Title Suit No. 264 of 2009 for declaration of his title over the property in dispute where the parties have already entered appearance after having been summoned and they have also filed their written statement. In that background, it is submitted on behalf of the petitioners that a purely civil dispute between the parties has been taken up by the complainant to a criminal Court only for the purpose of causing harassment to the

petitioners and, therefore, institution of criminal case is abuse of process of the Court..

9. Mr. Rajendra Narain, learned senior counsel appearing on behalf of the petitioners, on the other hand, has relied upon a Supreme Court judgment reported in AIR 2012 SC 1007 in case of Lee Kun Hee Vs. State of U.P. & Ors and has submitted that institution of a civil suit cannot be treated to be a bar for institution of a criminal case when culpability of the accused persons of criminal offence is also made out on the basis of allegations made in the complaint case.

10. I need not go into this submission made on behalf of the parties as I am of the considered opinion that no offence under various provisions of the Indian Penal Code, of which cognizance has been taken by the learned Judicial Magistrate Ist Class, Siwan, is made out, so far these petitioners are concerned. No reason has been shown nor any material has been referred to by learned senior Counsel for the Opposite party No.2 to me as to why the learned Judicial Magistrate Ist Class, Siwan summoned

them to appear in the said criminal case as an accused.

11. The order dated 09.03.2011 passed by the learned Judicial Magistrate Ist Class, Siwan in Complaint Case No. 852 of 2009 taking cognizance of the offence under Sections 465, 468, 471 and 120B of the Indian Penal Code and issuing summonses to the accused persons is accordingly, quashed to the extent it relates to these petitioners.

12. This application is, accordingly, allowed.

(Chakradhari Sharan Singh, J)

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