

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.42336 of 2012

Arising Out of PS.Case No. -638 Year- 2010 Thana –Kotwali (Adampur) District- BHAGALPUR

- =====
1. Balram Bihari Lal S/O Late Atal Bihari Lal
 2. Chand Bihari Lal S/O Late Shyam Bihari Lal
 3. Vinod Bihari Lal S/O Late Shyam Bihari Lal
 4. Anand Bihari Lal S/O Late Shyam Bihari Lal
- Residents of Village- Anathalaya Road Nathnagar, Police Station- Nathnagar, District- Bhagalpur.
5. Chhabi Nath Singh S/O Late Bengali Singh, Resident Of Village- Sultanpur, Police Station- Shahkund, District- Bhagalpur.
 6. Bindeshwari Singh S/O Late Bhagwat Singh. Resident Of Village- Bahbalpur, Police Station- Nathnagar, District- Bhagalpur.
 7. Brajendra Narayan Singh S/O Shri Ram Narayan Singh, Resident Of Village- Noorpur, Police Station- Nathnagar, District- Bhagalpur.
 8. Mahendra Singh @ Mahendra Kumar Singh, S/O Late Bhuwaneshwar Singh, Resident Of Village- Bahbalpur, Police Station- Nathnagar, District- Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar
2. Gopal Chandra Das, S/O Late Ashuchandra Das,
Resident Of Kailashpur, Jagria, Police Station- Shahkund, District- Bhagalpur,
Presently Residing At Anathalay Road, Nathnagar, Police Station- Nathnagar, District- Bhagalpur.

.... Opposite Party/s

With

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Criminal Miscellaneous No. 31105 of 2012

Arising Out of PS.Case No. -638 Year- 2010 Thana –Kotwali (Adampur) District- BHAGALPUR

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1. Madhu Kumari W/o Jitendra Prasad, D/o Yogendra Prasad, resident of village- Dharhara, P.S. Dharhara, District Munger.
 2. Jitendra Kumar @ Jitendra Prasad, S/o Sri Bhaso Paswan, resident of Village- Shahkund Block Campus, P.O. + P.S.-Shahkund, District-Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar
2. Mostt. Meena Devi, W/o Late Gopal Chandra Das, resident of Kailshpur Jagria, P.S. Shahkund, District-Bhagalpur. Presently resident at Anathlaya Road, Nathnagar, P.S. Nathnagar, District-Bhagalpur.

.... Opposite Party/s

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Appearance :

(In Cr.Misc. No. 42336 of 2012)

For the Petitioner/s : Mr. S. M. Ashraf, Advocate
For the Opposite Party/s : Mr. Parmanand Prasad, APP

(In Cr.Misc. No. 31105 of 2012)

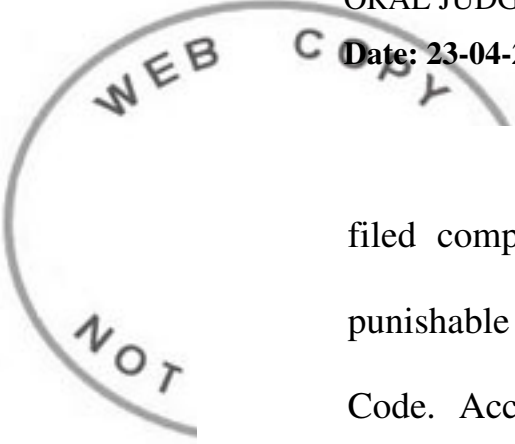
For the Petitioner/s : Mr. Raj Kumar, Advocate
For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP
For Opposite Party No.2 : Mr. Ranjan Kumar Sinha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 23-04-2015



The 2nd opposite party herein –Gopal Chandra Das filed complaint against the petitioners herein, alleging offences punishable under Section 406, 420, 120B and 34 of the Indian Penal Code. According to him, the petitioners 1 to 4 in Cr. Misc. No.42336 of 2012 (for short, first case) sold a piece of land in the years 1985 and 1988 but the same land was sold by them to the petitioners in Cr. Misc. No.31105 of 2012 (for short, second case). It was also mentioned that petitioner no.5 in the first case measured the land, petitioner nos. 6 and 7 figured as witnesses and petitioner no.8 scribed the document executed on 26.03.2010 and 09.08.2010.

The F.I.R. was registered as Kotwali (Adampur) Police Station Case No.638 of 2010 and the matter was placed before the learned Judicial Magistrate, Bhagalpur. Through order dated 12.05.2011, the learned Judicial Magistrate took cognizance of the matter. The said order is challenged in these two Criminal Miscellaneous cases, filed under Section 482 of the Code of Criminal Procedure.

Heard learned counsel for the petitioners and the learned Additional Public Prosecutor in both the cases.

The sale of a land to different sets of persons, by the same owner, prima facie, constitutes an offence of cheating. The truth or otherwise of the allegations made against petitioner nos.1 to 4 in the first case need to be considered.

The plea of the petitioners that the dispute is civil in nature cannot be accepted, particularly at this stage, as long as the factum of execution of two sets of sale deeds is not disputed. This Court is not inclined to quash the proceedings insofar as they are against petitioners no.1 to 4 herein, in the first case.

However, the other petitioners in the first case, who just figured as witnesses or scribe or the person who measured the land, cannot be said to be the part of the crime, even if proved.

Similarly, the subsequent purchasers, who are petitioners in the second case cannot be said to have committed any offence, rather they are also the victims of cheating.

Therefore, Cr. Misc. No.42336 of 2012 is partly allowed quashing the proceedings insofar as they are against petitioners no.5 to 8 therein. The case against petitioners no.1 to 4 shall remain.

Cr. Misc. No.31105 of 2012 is allowed and the proceedings against the petitioners therein are quashed.

Interlocutory applications, if any, shall stand disposed

of.

(L. Narasimha Reddy, CJ)

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