

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.49762 of 2012

Arising Out of PS.Case No. -1613 Year- 2009 Thana -null District- PATNA

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1. Rinku Singh @ Rinku Devi daughter of Late Sanjit Singh, resident of village- Karnpura, P.S. Naubatpur, District - Patna

2. Bir Bhushan Kumar son of Late Trivan Singh, resident of Mohalla - Dalwar Road, Bibiganj, P.S.- Danapur, District - Patna

.... Petitioner/s

Versus

1. The State of Bihar

2. Hari Narayan Singh son of Late Ram Jiwan Singh, resident of village - Saguna, P.S.- Danapur, District - Patna at present residing at Sidheshwar Market Birla Mandir Road, P.S.- Pirbahore, District - Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Avanish Kumar Singh, Advocate

For the State : Mr. Ram Anurag Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 07-07-2015

This application under section 482 of the Code of Criminal Procedure (for short “the Code”) is directed against the order dated 29.06.2009 passed in Complaint Case No. 1613(C) of 2009 by learned Judicial Magistrate, Patna whereby the learned Magistrate took cognizance of the offences punishable under Sections 420,468, 471 and 120B of the Indian Penal Code and issued non-bailable warrant of arrest under Section 204(1)(b) of the Code against the petitioners and others.

2. The case of the complainant-opposite party no.2 according to the complaint is that he has only one daughter namely,



Renu Singh and has no other issue. He has ancestral lands at Mauza Saguna, Pargana Phulwarisharif, District- Patna under Tauzi No. 5525, Thana No. 23, Khata Nos.199 and 204, Plot No.80, area one Bigha one Katha; in Mauza Jalalpur, P.S.-Danapur, District- Patna under Khata No. 158, Plot No.70, Thana No.22, area 10 Kathas 16 Dhurs; in Mauza Kothwan, Pargana Phulwarisharif, P.S.-Danapur, District- Patna, 98 decimals of land under Khata No. 61, Survey Plot No. 51, Thana No.37; and in Mauza Dhanaut Pargana Phulwarisharif, P.S.-Danapur, District- Patna 21 ½ decimals of land under Khata No. 34, Thana No. 20, Survey Plot No.70.

3. He has further stated that he is the sole owner of the said lands as well as other lands situated at Patna and other places. On 12.5.2009, he came to know that one Shiv Shanker Upadhaya has obtained a forged and fabricated power of attorney of the lands on 25.02.2009 and 19.3.2009 which have been executed by him. On the strength of the said forged and fabricated power of attorney, Shiv Shanker Upadhaya in conspiracy with other persons executed a sale deed on 25.2.2009 of his land situated at Mauza Jalalpur, P.S.-Danapur, District- Patna to one Sami Alam and one Rizwan Ahmad.

4. The further case of the complainant is that when he came to know about the said forged and fabricated power of attorney, he approached the Registry Office at Patna and filed a cancellation



petition before the Registrar, Patna Collectorate. On 14.05.2009, both the forged and fabricated power of attorney were cancelled. Further, for the alleged transfer of land in favour of Sami Alam and Rizwan Ahmad, a complaint case bearing Complaint Case No. 1321 C of 2009 was filed in which the court of Magistrate took cognizance against said Shiv Shankar Upadhaya and others. On 13.6.2009, the complainant came to know that after cancellation of the said forged and fabricated power of attorney once again said Shiv Shankar Upadhaya in conspiracy with accused Sanjay Kumar Singh, Binod Kumar, Smt.Kiran Devi, Om Prakash, Prashant Kumar and Dharendra Kumar Jha executed three sale deeds on 25.03.2009, 21.05.2009 and 27.05.2009 in favour of the petitioners. The complainant alleges that he once again rushed to Danapur Registry Office and obtained a photocopy of the sale deeds and found that the accused persons in conspiracy with each other forged and fabricated a power of attorney and on the strength of that, executed the said sale deeds. The complainant claims that the accused persons intend to grab his land illegally.

5. The complainant was examined on solemn affirmation. In course of enquiry, two witnesses namely, Arun Kumar Singh and Renu Singh were also examined on behalf of the complainant under Section 202 of the Code. After holding enquiry the learned Judicial

Magistrate, Ist Class, Patna vide impugned order dated 29.06.2009 issued non-bailable warrant of arrest against the accused persons named in the complaint to face prosecution for the offences under Section 420, 468, 471 and 120B of the Penal Code.

6. Learned counsel for the petitioners has submitted that admittedly the complicity of the petitioners is not alleged in preparing the forged and fabricated power of attorney. He contends that as a matter of fact it is the petitioners, who have been cheated by opposite party no.2 in the said transaction. It was the complainant- opposite party no.2, who had firstly executed two power of attorneys dated 25.02.2009 and 19.03.2009 in favour of Shiv Shankar Upadhaya and got them registered. Thereupon, Shiv Shankar Upadhaya took the petitioners into confidence on the basis of registered power of attorney and allured them to purchase the land in question. Finally, after receiving their share of booty, he cancelled the power of attorney and filed the instant complaint case.

7. It has further been contended that even if the entire allegations made in the complaint are taken to be true at its face value the offences alleged would not be attracted as against the petitioners as they are innocent purchasers of the land in question and have parted with sale consideration. In this regard he has placed reliance on the decision of the Supreme Court in the case of **Mohammad Ibrahim**



and others vs. State of Bihar and another [(2009)8 SCC 751], wherein it has been held that when a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with sale consideration. Under such circumstance, the purchaser cannot be made an accused.

8. Despite service of notice to opposite party no.2, he has chosen not to appear.

9. Learned counsel for the State has submitted that on the basis of allegations made in the complaint, ingredients of the offences alleged are attracted. According to him, it would appear from the record that the complainant and the witnesses examined in course of enquiry have corroborated the allegations made in the complaint. In that view of the matter, the impugned order passed by the court below cannot be held to be bad.

10. I have heard respective counsel for the parties and perused the record. It would be evident from the record that the complainant claims himself to be the sole owner of the property, a detail of which has been given in the complaint petition. On 12.5.2009, he learnt that the accused Shiv Shankar Upadhyay had obtained a forged and fabricated power of attorney and on the strength

of that executed three sale deeds on 25.3.2009, 21.5.2009 and 27.5.2009 respectively in favour of the petitioners. There is no allegation in the complainant that the petitioners have committed any fraud with the complainant. Further, if at all there would have any grievance for the said act of the co-accused Shiv Shankar Upadhyay, it would be the petitioners, who have parted with sale consideration for purchase of the land. The decision of the Supreme Court in *Mohd. Ibrahim* (supra) squarely covers the case of the petitioners. Regard being had to the allegations made in the complaint and the law laid down by the Supreme Court in *Mohd. Ibrahim* (supra), I am of the opinion that even if the averments made in the complaint are assumed to be true, no offence under sections 420, 468, 471 and 120B of the Penal Code can be made out against the petitioners.

11. For the reasons stated above, the application is allowed. The impugned order dated 29.6.2009 passed by the learned Judicial Magistrate, Patna, in Complaint Case No.1613(C) of 2009, so far as it relates to the petitioners is quashed.

(Ashwani Kumar Singh, J)

Md.S./-

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