

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No. 4082 of 2013

Arising Out of PS.Case No. -796 Year- 2005 Thana -PATNA COMPLAINT CASE District-
PATNA

- =====
1. Kusum Devi W/O Shankar Rai Resident Of Khagaul Road, P.S- Danapur, District- Patna.
 2. Shankar Rai S/O Late Ram Nandan Rai Resident Of Khagaul Road, P.S- Danapur, District- Patna.
 3. Sanjay Kumar S/O Shri Ramshreshatha Rai (Whereas in Complaint Petition it has wrongly stated as Shankar Rai) Resident Of Khagaul Road, P.S- Danapur, District- Patna.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Sant Sharan Goswami W/O Late Paltoo Goswami Resident Of Saguna, Danapur, District- Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Yogesh Chandra Verma, Sr. Adv.

For the Opposite Party/s : Mr.

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

Date: 03-08-2015

The petitioners have assailed the order dated 27.06.2012 passed by the Sub-Divisional Judicial Magistrate, Danapur in Complaint Case No. 796(C) of 2005 and the order dated 01.10.2012 passed by the learned Sessions Judge, Patna in Cr. Revision No. 642 of 2012, by which the petition for discharge filed by them under Section 245 of the Code Criminal Procedure has been rejected.

The allegation in the complaint petition that petitioners along with other persons have conspired with each other and have committed an offence of forgery with common intention by preparing an ante-dated special Power of Attorney on 15.09.1990, in favour of Petitioner No. 1 forging the signature of Mewalal Rai, her father. The

further allegation is that on the basis of the said Power of Attorney containing forged signature of her father Mewalal Rai, accused no. 1 Kusum Devi (Petitioner no. 1) has further executed a Power of Attorney dated 18.12.1999 in favour of accused no. 5 and got the property mutated in Municipal Corporation, Danapur by getting the rent receipt manufactured in collusion with accused no. 6 and thereby committed an offence of forgery. On the basis of the complaint so filed against six persons, cognizance has been taken against accused nos. 1, 2, 3 and 5 under Sections 420, 468, 504, 506, 471/34 of the Indian Penal Code and three of them are petitioners before this Court.

The dispute, as alleged by the complainant, is with respect to the title and possession of a land, appertaining to 113 decimals in different plots i.e. plot nos. 441, 440, 449, 159 and 267 situated at Mauza- Saguna District Patna.

Mr. Yogesh Chandra Verma, learned senior counsel appearing on behalf of the petitioners has emphasized that the dispute between the petitioners and the complainant is purely of a civil nature and there is longstanding litigation between them as they are agnates having common ancestor Mukhia Devi, who had three sons, namely, Mangal Rai, Shiv Prasad Rai and Mewalal Rai, who after the death of Mukhia Devi partitioned the said property in question between themselves. The dispute is between Kusum Devi daughter of Mewalal Rai and Bijendra Prasad who is the son of Shiv Prasad Rai. A property



dispute between them is going on since 1984 and various cases of civil nature have been filed by either parties such as Kusum Devi filed Mutation Case No. 1355/1996-97, which was allowed on 07.01.1998. Against the said order, Bijendra Prasad filed Mutation Appeal No. 03 of 2001 before the D.C.L.R, Danapur which was allowed on 22.08.2000, against which Petitioner no. 1 preferred Mutation Revision No. 10 of 2008-09 before the Collector wherein she succeeded, against which Bijendra Prasad has preferred civil writ before this Court, which is pending for adjudication. The complainant has also instituted a Title Suit bearing No. 03 of 2006, which is pending before the Sub-Judge, Danapur relating to the same land against Petitioner no. 1. Mr. Verma, learned senior counsel further asserted that since Petitioner no. 1 and Bijendra Prasad are having land dispute, it is a case of pure civil nature, hence no charge is made out under Sections 420, 468, 504, 506, 471/34 of the Indian Penal Code against the petitioners. He further submitted that on the basis of the nature of dispute, the petitioners filed a discharge petition before the S.D.J.M, Danapur which was rejected by the S.D.J.M and thereafter by Sessions Judge, Patna without recording the reasons for the same. Reliance has been placed by the learned senior counsel, on a decision of the Apex Court in the case of **Md. Ibrahim & Ors. v. State of Bihar & Anr** hence reported in **2009(4) PLJR (SC) 99**, wherein at paragraph 7 it has emphatically been stated that the Criminal Courts should ensure that proceedings before it are not used for settling scores or to pressurize the parties to settle civil disputes. On



this count he has further referred to a decision in the case of **Rajib Ranjan & Ors v. R. Vijaykumar**, reported in **2015 CRI. L.J. 267 SC** that criminal complaint filed after civil case was clearly an afterthought just to give colour of criminality to civil case. Learned senior counsel has further relied upon the judgment of the Hon'ble Apex Court in the case of **Sajjan Kumar vs. Central Bureau of Investigation**, reported in **2011 (1) PLJR (SC) 33** stating therein that on the petition of discharge, the Court is not required to make a roving enquiry into the pros and cons of the matter and weigh the evidence as if conducting the trial. He emphasized that the petition for discharge should not be simply rejected in a routine and mechanical manner but reasons to be recorded mandatorily and for this proposition has relied in the case of **Renuka Vs. State of Karnataka & Anr**, reported in **2009 (2) BBCJ IV SC 285** and in the case of **Manoranjan Singh & Anr v. State of Bihar & Anr**, reported in **2008 (1) PLJR 734**.

Learned counsel for the complainant has appeared and filed its counter affidavit not disputing that the dispute is over the ancestral property affirming various civil cases filed before different courts and alleged forgery by Petitioner no. 1 in collusion with other accused, who are the petitioners before this Court, of obtaining forge signature of Mewalal Rai on the Power of Attorney.

Having considered the matter, the question is whether the petitioners have made out a case for discharge or not. Here it is relevant to examine the order of S.D.J.M, Patna dated 27.06.2012 who has taken



into account the various civil cases existing between the parties and some of them were made exhibits but without recording any reasons has rejected the petition for discharge. Here the order of the D.C.L.R, Danapur in Mutation Appeal No. 03/2000-01 dated 22.08.2008 annexed as Annexure - E of the counter affidavit of the complainant finds relevance for a limited purpose only. On hearing the mutation appeal, the D.C.L.R, Danapur while taking note of the forged Power of Attorney of Mewalal Rai has also observed that the dispute in question between the parties is purely of a civil nature to be tried in the civil court of competent jurisdiction. Although the Order of DCLR, Danapur in Mutation appeal was exhibited in the Court of SDJM, Patna he did not record any finding to the same. While discussing the role of the Court, the Hon'ble Apex Court in the case of **State of Bihar v. Ram Naresh Pandey** reported in **AIR 1957 SC 389** has observed that "his discretion in such matters has necessarily to be exercised with reference to such material as is by then available and it is not a *prima facie* judicial determination of any specific issue". Justice Bhagawati, as he then was, has also observed at Para 14, in **Sheonandan Paswan v. State of Bihar** reported in **(1987) 1 SCC 288**. "A criminal proceeding is not a proceeding for vindication of a private grievance but it is a proceeding initiated for the purpose of punishment to the offender in the interest of the society." At Para 81 in **Sheonandan Paswan** (supra) the Apex Court while discussing Section 245(1) also holds that the power of discharge by Magistrate is fettered by an obligation to

record his reasons. It has further been held in the case of **Bageshwar Misser v. Khandari Kuer and the State** hence reported in **AIR 1970 Patna 20**, relevant of which is quoted below:-

“The distinction between a case of mere breach of contract and one of cheating depends upon the intention of the accused at the time of the alleged inducement which may be judged by his subsequent act, but of which the subsequent act is not the sole criterion. Where there is no clear and conclusive evidence of the criminal intention of the accused at the time the offence is said to have been committed, and where the party said to be aggrieved has an alternative remedy in the civil Court the matter should not be allowed to be fought in the Criminal Courts”.

From the observations as made above, it appears that the S.D.J.M, Danapur, while passing the order dated 27.06.1992 in Complaint Case No. 796(C) of 2005 has failed to record reasons and has rejected the discharge petition in a routine and mechanical manner. The same applies to the order dated 01.10.2012 passed in Cr. Revision No. 642 of 2012 by the learned Sessions Judge, Patna.

With the aforesaid observations, the present application is allowed. The order dated 27.06.2012 passed by the Sub-Division Judicial Magistrate, Danapur in Complaint Case No. 796(C) of 2005 and order dated 01.10.2012 passed by the learned Sessions Judge, Patna in Cr. Revision No. 642 of 2012, are hereby set aside.

Prakash

(Nilu Agrawal, J)

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