

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.51936 of 2013

Arising Out of PS.Case No. -415 Year- 2013 Thana -ARA NAWADA District- BHOJPUR

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1. Harendra Dubey Son Of Late Girja Shankar Dubey Resident Of 5 Lindse Street, P.S. New Market, District- Kolkata

.... Petitioner/s

Versus

1. The State Of Bihar
2. Rajiv Ranjan Son Of Late Ram Lakhan Sinha Resident Of Road No. 7, Ashok Nagar, P.S. Kankarbagh, District- Patna At Present Circle Office, Sadar, Ara. P.S. Ara Nawada, District- Bhojpur

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sandeep Kumar

For the Opposite Party/s : Mr. Jharkhandi Upadhyay (App)

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH
ORAL ORDER

4 22-04-2016 Heard learned counsel for the parties.

This application has been filed for seeking quashing of the First Information Report of Ara Nawada P.S. Case No. 415 of 2013 registered for the offences punishable under Sections 406, 409, 420, 463, 468, 419, 120(B) read with Section 34 of the Indian Penal Code.

The petitioner has been made accused in the First Information Report instituted on the basis of written report of Circle Officer, Ara Sadar.

According to the First Information Report, the petitioner purchased a piece of land measuring an area 12½



decimal from the vendors Udit Shankar and Uttam Shankar, appertaining to Thana No. 239, Old Ward No. 4/new 10, Holding No. 61, Circle No.2, new Khata No. 75, Khesra No. New 184 (k) (kh) (ga) (gh) (ch) (chh) and 186 (k) (kh). It is alleged that the said land could not be purchased or sold being part of prohibited Khata No. 122. It is alleged that the vendors and the purchaser i.e. the petitioner connived in concealing this fact by not mentioning khata No. 122 in the sale deed. It is also alleged that the accused persons shown less area i.e. 1200 sqft only, than the actual land said to have been purchased with the intention of evading stamp duty and thus causing loss of revenue to the State.

At the very outset Mr. Sandeep Kumar appearing on behalf of the petitioner has submitted that deficit stamp duty has been paid by the petitioner and in any event no offence can be said to have been made out for payment of less stamp duty.

Learned counsel for the petitioner has further submitted that the present F.I.R was instituted on 22.11.2013 on the basis of written report of the Circle Officer, Sadar Ara. Prior to lodging of the F.I.R, the Circle Officer had filed a Title Suit on 19.11.2013, which fact has been concealed in the First Information Report.

He has further submitted that even if the allegations



as contained in the First Information Report are taken to be true on face value, no cognizable offence can be said to be made out on that basis. He contends that the names of the vendors from whom, the petitioner purchased the said land finds place in khatihan and after due verification of the revenue records, the petitioner had purchased the said property. He also submits that in such circumstance, institution of First Information Report is an abuse of process of law. He has placed reliance on the Supreme Court decision in case of ***Paramjeet Batra Vs State of Uttarakhand and Others reported in (2013)11 Supreme Court Cases 673***. The Supreme Court has observed in the said case that the High Court is required to see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence.

The learned Additional Public Prosecutor appearing on behalf of the State of Bihar has opposed the application and has submitted that cognizable offence under various provisions of the Indian Penal Code is made out on the basis of allegation levelled in the First Information Report and merely on the basis that dispute between the parties is of civil nature, the criminal prosecution may not be quashed.

From First Information Report, I find that the F.I.R has been filed for commission of the offence under Sections 406,



409, 420, 463, 468, 419, 120B read with Section 34 of the Indian Penal Code. I have no hesitation in holding that no offence under Sections 406 and 409 of the Indian Penal Code is made out on the basis of the allegations contained in the First Information Report. There being no entrustment of property by the informant to the accused persons, which is basic requirement for constitution of offence under the said provisions. What has been alleged against the petitioner is that he purchased a property from co-accused Udit Shankar and Uttam Shankar, the vendors, who could not have sold the said land/property as the said land was part of plot lying under khata no. 122 which was a prohibited plot. There is no objection to the plea taken that the names of vendors from whom the petitioner purchased the said piece of land in the Revenue Records as holders of the land. No offence therefore, can be said to be made out under Sections 420, 419 and 420 of the Indian Penal Code. Similarly, in my view, the allegations do not constitute any offence under Sections 467 or 468 of the Indian Penal Code.

Learned Counsel for the petitioner appears to be right in his submission that purely civil dispute with respect to title over the land in question has been given a colour of a criminal offence.

In my opinion, therefore, the First Information Report of Ara Nawada P.S. Case No. 415 of 2013 and entire

proceeding arising out of the same deserve to be quashed for the ends of justice.

This application is partly allowed. The F.I.R and the entire proceedings arising out of Ara Nawada P.S. Case No. 415 of 2013 stands quashed.

(Chakradhari Sharan Singh, J.)

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