# IN THE HIGH COURT OF JUDICATURE AT PATNA

**Criminal Miscellaneous No.7700 of 2014**

Arising Out of PS.Case No. -801 Year- 2012 Thana -BETTIAH CITY District- WESTCHAMPARAN(BETTIAH)

======================================================

1. Nawal Kishore Rai, S/O Late Gokhula Rai, Resident of Kabirpath, Banuchapar, P.S.- Bettiah Mufasil, District- West Champaran
2. Bishwanath Raut @ Bishwanath Prasad
3. Mohan Raut
4. Chandra Shekhar Raut, petitioner no 2 to 4 are sons of Late Deni Raut

All are residents of Village- Jain Tola Sagar Pokhara Nagar, P.S.- Bettiah, District- West Champaran

.... .... Petitioner/s

Versus

1. The State of Bihar
2. Ramesh Chandra Tiwari @ Ramesh Tiwari, S/O Late Navnath Prasad Tiwari, Resident of Mohalla- Kila Ward No.-20, P.S.- Town Bettiah, District- West Champaran

.... .... Opposite Party/s

======================================================

**Appearance :**

For the Petitioner/s : Mr. A.K. Thakur, Advocate
For the State : Mr. Mayanand Jha, APP
For the Opposite Party/s : Mr. Sanjeev Kumar, Advocate

======================================================

**CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL**
ORAL JUDGMENT
**Date: 28-11-2016**

Heard the parties.

2. Petitioners seek quashing of the order of cognizance dated 20.01.2014, passed by learned Chief Judicial Magistrate, West Champaran at Bettiah in Bettiah Town P.S. Case No. 801/12 for offences punishable under Sections 406, 467, 468, 471, 327, 506, 504/34 of the Indian Penal Code.

3. The case of the complainant-informant is that the accused persons Nawal Kishore Rai, Bishwanath Raut @

Bishwanath Prasad, Mohan Raut and Chandra Shekhar Raut in conspiracy with each other had sold out his land. The allegation made by the complainant/ informant is that on 11.09.1980 he purchased 6 dhurs of land pertaining to Khata No. 23/33, Khesra No. 144 at Banuchapar, P.S. Bettiah, West Champaran. Petitioner No. 2 Bishwanath Raut @ Bishwanath Prasad was a deed writer and signatory to the said deed of purchase as witness. On 22.10.2010 petitioner no. 2 in conspiracy with petitioner nos. 3 and 4 had fraudulently executed a sale deed in favour of petitioner no. 1 Nawal Kishore Rai. Petitioner no. 1 was the purchaser whereas petitioner nos. 2, 3 and 4 are vendors.

4. This Court by order dated 01.09.2014 prima facie finding that the documents of the relevant parties had been looked into by an independent agency, which had found the allegations to be false, observing that it was a bona fide land dispute between the parties, quashed the entire proceedings including the order of cognizance dated 20.01.2014.

5. The complainant-informant moved the Apex Court against the said order in Criminal Appeal No. 1698 of 2015, which was partly allowed on 14.12.2015 with the following order :

> *"....the High Court has not examined the role of Shri Bishwanath Raut @ Bishwanath Prasad. Therefore, we allow the appeal qua Bishwanath*

*Raut. The High court shall examine Shri Bishwanath and shall take appropriate decision. So far as other parties are concerned, the order stands.*

*4. The High Court shall hear the parties on 15.01.2016.*

*5. In view of the above observation, the appeal is partly allowed."*

6. In view of the observation/ order of the Apex Court the role of petitioner no. 2 Bishwanath Raut @ Bishwanath Prasad has to be examined. So far as the other three petitioners are concerned, the order of this Court stands.

7. Learned counsel for petitioner Bishwanath Raut @ Bishwanath Prasad submits that the matter is purely a civil dispute and the allegations made against petitioner Bishwanath Raut @ Vishwanath Prasad is totally false. He elucidates the history of the lands in question and submits that as per cadastral survey the land is part of the khatiyani land belonging to one Janki Tatwa and the total area of the land was 10 kathas 4 dhurs. The said Janki Tatwa had two sons, namely, Sitaram Das and Pargan Das, who after his death partitioned the said land in the year 1942 in the ratio of 5 kathas 2 dhurs respectively being share of the two sons. The said land on the eastern side fell in the share of Sitaram Das and an area of 5 kathas 2 dhurs from western side fell in the share of Pargan Das. The said

Sitaram Das executed *Rehan* in favour of Baidnath Prasad on 19.11.1942 in which it has been mentioned that 5 kathas 2 dhurs was allotted in his share. The said Sitaram Das had four sons whereas Pargan Das had one son, namely, Ram Briksh Das. The four sons of Sitaram Das sold the entire land of 5 kathas 2 dhurs of land by executing a sale deed in different years to three different persons i.e. Laxmi Prasad, S/o Chhedu Ram, Sambhu Prasad, S/o Laxmi Prasad and Meera Devi, W/o Ram Chandra Prasad by three registered sale deed dated 21.07.1967, 21.08.1968 and 14.07.1969. Similarly son of Pargan Das, namely, Ram Briksh Das sold 1 katha of land to Deni Raut over Jamabandi No. 24, Khata No. 33, Khesra No. 144 under Municipal Holding No. 106 dated 10.10.1968. The said Deni Raut died leaving behind his three sons, namely, Bishwanath Raut @ Bishwanath Prasad (petitioner no. 2), Mohan Raut (petitioner no. 3) and Chandra Shekhar Raut (petitioner no. 4). The said land purchased by Deni Raut was recorded in the revenue records of right in his name and rent receipt were also issued. After death of Deni Raut his three sons,(petitioner nos. 2, 3 and 4) executed a sale deed in favour of petitioner no. 1 Nawal Kishore Rai over 18 dhurs and 6 dhurkis of the land out of 1 katha of land purchased and belonging to their father, by a registered sale deed dated 22.10.2010. The said land was thereafter mutated in favour of petitioner no. 1 Nawal Kishore

Rai by Mutation Case No. 122/2011-12 and rent receipt was issued in his favour.

8. Learned counsel for the petitioners submits that the present complaint is concerned with the alleged 6 dhurs of land, which the sons of said Sitaram Das had already sold to the three persons in the year 1967, 1968, 1969 by sale deed dated 21.07. 1967, 21.08.1968 and 14.07.1969. In that view of the matter, he submits that petitioner no. 2 is not concerned with the share falling in the hands of the heirs of Sitaram Das. He further submits that the allegation against petitioner no. 2 is of being a deed writer and signatory to the deed of the year 1980. He submits that there is no allegation that petitioner nos. 2, 3 and 4 had impersonated any fictitious person as they were the rightful owners of the lands in question and had got the sale deed executed in favour of petitioner no. 1 on 22.10.2010. Hence, no offence under Sections 467, 468, 471 of the Indian Penal Code is made out. Similarly, no offence is made out under Section 323 of the Indian Penal Code or under Sections 504 and 327 of the Indian Penal Code, which is an exaggeration. He further submits that during investigation the police had found that the complainant had not got the sale deed executed from the real owner and the lands purchased by petitioner no. 1 was found to be genuine by the Sub-Divisional Officer, Bettiah in Misc. Case No. 31/1990-91

which facts are mentioned in paragraph 38 of the case diary. In fact, the complainant/ informant was sharing the same boundary as the plot in question initially was of 10 kathas 4 dhurs, which was partitioned between the brothers of the common ancestors in the year 1942 and Deni Raut father of petitioner nos. 2, 3 and 4 had purchased 1 katha out of the said land from Pargan Das, grand-son of one of the sons of the common ancestor Janki Tatwa. The police during investigation also opined that the matter was a civil dispute, and, accordingly, submitted final report. However, learned Judicial Magistrate without consideration of the entire materials collected by the police during investigation differed with the final report and took cognizance against the four petitioners for offences under Sections 406, 467, 468, 471, 327, 506, 504/34 of the Indian Penal Code.

9. On the other hand, learned counsel appearing for opposite party no. 2 submits that having regard to the *modus operandi* adopted by the accused, which was not considered by the police in the charge-sheet, it is not a fit case for exercise of jurisdiction by the High Court under Section 482 of the Cr.P.C. as sufficient circumstances exist suggesting forgery of sale deed leading to commission of aforesaid offences. He submits that petitioner nos. 2, 3 and 4 made a false document and, hence, has committed an offence under the first explanation of Section 464 of the Indian Penal

Code. In this regard, he relies on the judgment of the Apex Court in the case of ***Sushil Suri Vs. Central Bureau of Investigation and another***, since reported in ***(2011) 5 Supreme Court Cases 708***, which was a case where the Directors along with the accused and other persons conspired to forge, fabricate and use documents in order to avail loan from the Bank and had opened fictitious Bank accounts in names of suppliers to encash pay orders, demand drafts issued by the Bank and played fraud with the Bank and also on public exchequer by claiming depreciation on machinery which was never purchased. They were charge-sheeted for offences punishable under Section 120-B read with Sections 420, 409, 468 and 471 of the Indian Penal Code. The submission of the defece was that the entire amount was paid to the Bank, there was no monetary loss, therefore, continuation of criminal proceedings against the accused was not proper. The High Court came to the conclusion that merely because the Company and its Directors had repaid the loan to the Bank, they could not be exonerated of the offences committed by forging/ fabricating the documents. Hence, did not grant any relief to the accused. The accused aggrieved thereby, moved the Apex Court and the Apex Court dismissed the appeal of the accused. The relevant part of the judgment at para 33 reads as under :

*"33. In the present case, having regard to the*

*modus operandi adopted by the accused, as projected in the charge-sheet and briefly referred to in para 23 we have no hesitation in holding that it is not a fit case for exercise of jurisdiction by the High Court under Section 482 CrPC as also by this Court under Article 142 of the Constitution of India. As noted above, the accused had not only duped PSB, they had also availed of depreciation on the machinery, which was never purchased and used by them, causing loss to the exchequer, a serious economic offence against the society".*

10. Having heard the rival submissions made on behalf of the parties, I would like to first consider whether the averments made in the complaint, even assuming to be true, make out the ingredients of the offences punishable under Sections 406, 467, 468, 471, 327, 506, 504/34 of the Indian Penal Code. The essential ingredients of offence punishable under Section 471 of the Indian Penal Code relate to using as genuine, a forged document or electronic record which reads as follows :

*"471. Using as genuine a forged [document or electronic record].- Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic*

*record."*

11. A bare reading of Section 471 of Indian Penal Code makes it clear that for attracting an offence under this section, there must be making of false document.

12. Section 464 of the Indian Penal Code defines 'making a false document' which reads as under :

> *"464. Making a false document.- A person is said to make a false document or false electronic record-*
> *Firstly—who dishonestly or fraudulently –*
> *(a) Makes, signs, seals or executes a document or part of a document;*
> *(b) Makes or transmits any electronic record or part of any electronic record,*
> *(c) Affixes any electronic signature on any electronic record;*
> *(d) Makes any mark denoting the execution of a document or the authenticity of the electronic signature,*
> *with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or*
> *Secondly—Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic*

*signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or*

*Thirdly – Who, dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practiced upon him, he does not know the contents of the document or electronic record or the nature of alteration."*

13. Section 470 defines a forged document as a false document made by forgery. The term 'forgery' used in these two sections is defined in section 463 of the Indian Penal Code which reads as under:

*"463. Forgery.- Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, to cause any person or part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."*

14. Section 471 of the Indian Penal Code provides

that whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to belief to be a forged document, shall be punished in the same manner as if he had forged such document.

15. The condition precedent for an offence under section 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). The question, thus, arises as to whether the petitioner in executing and registering the sale deed purporting to sell a property, even if it is assumed that it did not belong to him, can be said to have made and executed a false document, in collusion with the other accused. An analysis of section 464 of the Indian Penal Code shows that it divides false documents into three categories: (i) The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed; (ii) The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person; (iii) The third is where a person dishonestly or fraudulently causes any person to sign,

execute or alter a document knowing that such person could not by reason of (a)unsoundness of mind; or (b) intoxication; or (c) deception practiced upon him, know the contents of the document or the nature of the alteration.

16. The sale deed executed by the petitioner, clearly and obviously do not fall under the second and third categories of 'false document'. Therefore, it is to be seen as to whether the claim of the complainant that the execution of sale deed by the petitioner amounted to committing forgery of the document with the intention of taking possession of the complainant's land would bring the case under the first category.

17. There is basic difference between a person executing a sale deed claiming that the property is his property and a person executing a sale deed by impersonating the owner or claiming to be authorized or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying the property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may dishonestly or fraudulently claim to be his, even though he knows that it is not his property. But to fall under first category of 'false document', it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a

further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

18. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorized by someone else. Therefore, execution of such document is not an execution of false document as defined under Section 464 of the Indian Penal Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then Sections 467, 468 or 471 of the Indian Penal Code are not attracted.

19. For the aforesaid submissions, learned counsel for the petitioner has relied on the judgment of the Apex Court in the case of ***Devendra and others Vs. State of Uttar Pradesh and another***, since reported in ***(2009) 7 Supreme Court Cases 495***, paragraphs 19, 20 whereof is quoted hereinbelow for ready reference :

> *"19. Making of any false document, in view of the definition of "forgery" is the sine qua non therefor. What would amount to making of a false document is specified in Section 464 thereof. What is, therefore, necessary is to*

> *execute a document with the intention of causing it to be believed that such document inter alia was made by the authority of a person by whom or by whose authority he knows that it was not made.*
>
> *20. The appellants are the owners of the property. They have executed a sale deed. Execution of the deed of sale is not denied. If somebody is aggrieved by the false assertions made in the said sale deed, it would be the vendees and not the co-sharers. The appellants have not been alleged to be guilty of creating any false document."*

20. Counsel for the petitioner has also relied on the judgment of the Apex Court in the case of ***Mohammed Ibrahim and others Vs. State of Bihar and another***, since reported in ***(2009)8 Supreme Court Cases 751***, paragraphs 16 and 17 whereof is quoted hereinbelow for ready reference :

> *"16. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that*

*he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of "false documents", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.*

*17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted."*

21. Similarly, the ingredients of Section 406 of the Indian Penal Code are not found as there was no criminal breach of

trust under Section 405 as the complainant had not entrusted the lands in question in any manner to petitioner no. 2. Thus, if there is no forgery then Sections 467, 468 or 471 of the Indian Penal Code are not attracted.

22. Having perused the materials on record as well as the documents, I find that the father of petitioner nos. 2, 3 and 4 had purchased 1 katha of land from one Ram Briksh Das, who had inherited his share from the common ancestor by way of partition of 10 katha 4 dhurs of land by registered sale deed dated 10.10.1968 (Annexure-5). Rent receipts were, accordingly, issued in the name of Deni Raut. Petitioner nos. 2, 3 and 4 having inherited the said 1 katha of land, sold 6 dhurs out of the said 1 katha to petitioner no. 1 Nawal Kishore Rai by a registered sale deed dated 22.10.2010 wherein all the three brothers Bishwanath Raut @ Bishwanath Prasad (petitioner no. 2), Mohan Raut (petitioner no. 3) and Chandra Shekhar Raut (petitioner no. 4) are signatories as executant in favour of petitioner no. 1 (Annexure-7). The allegation that petitioner no. 2 Bishwanath Raut @ Bishwanath Prasad in the year 1980 being a deed writer and witness to the same plot subsequently sold by sale deed dated 22.10.2010, does not attract the ingredients of forgery under Sections 467, 468 and 471 of the Indian Penal Code. In that view of the matter, even if the averments made in the complaint

assuming to be true in its entirety, it did not make out any offence either under Sections 406, 467, 468 or Section 471 of the Indian Penal Code.

23. Hence, the materials on record reveal that Vishwanath Raut @ Vishwanath Prasad being a co-sharer of the said 1 katha of land along with his two brothers Mohan Raut and Chandra Shekhar Raut (petitioner nos. 3, 4) inherited from their father Deni Raut, jointly sold 6 dhurs out of the said land to petitioner no. 1 Nawal Kishore Rai. There was no independent transaction by petitioner no. 2 Bishwanath Raut @ Bishwanath Prasad. Thus, the judgment in the case of ***Sushil Suri*** (supra) cited by opposite party no. 2 is not applicable in the present case and the judgments relied by the counsel for the petitioner in the case of ***Devendra and others*** (supra) and ***Mohammed Ibrahim and others*** (supra) is applicable in the present case.

24. For the reasons stated above, allowing the prosecution to continue as against petitioner no. 2 Bishwanath Raut @ Bishwanath Prasad would amount to gross abuse of the process of the Court.

25. In the result, the application is allowed. The entire proceedings including the order of cognizance dated 20.01.2014, passed by the learned Chief Judicial Magistrate, West

Champaran at Bettiah in Bettiah Town P.S. Case No. 801/12 against petitioner Bishwanath Raut @ Bishwanath Prasad is hereby quashed. It may be mentioned that the entire proceedings so far as other petitioners are concerned, had already been quashed by a Coordinate Bench of this Court on 01.09.2014 and the matter had been remanded only for the purposes of examination in the case of petitioner Bishwanath Raut @ Bishwanath Prasad.

**(Nilu Agrawal, J.)**

Rajesh/-

| | |
|---|---|
| AFR/NAFR | AFR |
| CAV DATE | 18.11.2016 |
| Uploading Date | 28.11.2016 |
| Transmission Date | 28.11.2016 |