

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.22312 of 2013

Arising Out of PS.Case No. -1741 Year- 2010 Thana -COMPLAINT CASE District- JAMUI

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1. Ashok Sah @ Ashok Kumar S/O Late Gobind Das R/O Village-
 Bangawa, P.S.- Simultalla, District- Jamui. Petitioner/s

Versus

1. The State Of Bihar
 2. Pratap Narayan Singh S/O Late Nilkanth Narayan Singh R/O
 Mohalla/Village- Thelwa Bazar, P.S.- Simultalla, District- Jamui
 Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Amaresh Kumar, Advocate
 Mr. Mukesh Kumar No.1, Advocate
 For the State : Mr. Ajay Kumar 1 (APP)
 For the O.P. No.2 : Mr. Arjun Pd. Keshri, Advocate

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

5 19-08-2016 Heard learned counsel for the petitioner as well as
 learned APP for the State assisted by learned counsel for O.P.
 No.2.

2. Petitioner, who happens to be an accused under
 Complaint Case No. 1741 C/2010, on account of being summoned
 to face trial for an offence punishable under Sections 420, 467,
 468 and 120(B) of the IPC vide order dated 29.03.2012 passed by
 Sri B.K. Singh, Judicial Magistrate-1st Class, Jamui, has
 challenged the same by way of the instant petition.

3. For better appreciation, the fact of the case is to be
 taken note of.

*O.P. NO.2 has alleged that he was taken to
 Registry Office by the accused persons and then they
 succeeded in getting a sale deed with regard to Khata*



No.2, Khesra No.106 and Khata No.3, Khesra No. 107 comprising total area 60 decimal and further, also succeeded in getting endorsement at his end regarding receipt of Rs. 3 Lacs. It has also been submitted that the aforesaid land did not belong to him rather the same belong to one Bengali fellow who hails from Kolkata having a building standing thereupon known as Lalkothi and for that the accused persons are litigating under the Eviction Suit.

4. The aforesaid complaint was inquired into in terms of Section 202 of the Cr.P.C during course of which three witnesses were examined and after perusal of the S.A. as well as statement of the witnesses, the learned Magistrate by the order impugned summoned the petitioner and the same is subject of challenge.

5. Learned counsel for the O.P. No.2 has submitted that under the deceitful manner, petitioner succeeded in getting the sale-deed with regard to the lands which never belonged to the complainant. It has also been submitted that actually negotiation was with regard to the land lying in front of Darwaza of accused persons and so, the sale deed happens to be out of fraudulent action of the accused. Consequent thereupon, the instant prosecution is just, legal and fair and should be allowed to

continue.

6. Learned counsel representing the petitioner has submitted that the sale-deed is not standing in his name. Apart from this, petitioner's presence is also not on the sale deed. Nothing adverse has been alleged against the petitioner and that being so, his prosecution is bad.

7. Furthermore, it has been submitted that being son-in-law of the vendee, he has been made accused.

8. In ***AIR 1992 SC 604 (State of Hariyana & Ors. Versus Bhajan Lal & Ors)*** the Hon'ble Apex Court has identified following categories wherein prosecution can be quashed and those are :-

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

(3) Where the uncontrovertd

allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, on investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient grounds for proceedings against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceedings is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

9. After going through the narration of the materials, it is apparent that there happens to be no prima facie material available on the record to suggest that petitioner has conspired with other co-accused during course of aforesaid transaction and that being so, prosecution of petitioner is found non permissible in the eye of law.

10. Consequent thereupon, the order impugned to the extent of petitioner is set aside. Petition is allowed.

(Aditya Kumar Trivedi, J)

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