

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.24310 of 2013**

Arising Out of PS.Case No. -789 Year- 2008 Thana -SAMASTIPUR COMPLAINT CASE District-SAMASTIPUR

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1. Neelam Kumari @ Neelam Devi wife of Sri Ram Udgar Mahto  
2. Ram Udgar Mahto , son of Late Lali Mahto  
Both are residents of Village Sahiyar Burj, P.S. + P.O. Rosera, District Samastipur.

.... .... Petitioners

Versus

1. The State of Bihar.  
2. Ram Prakash Mahto , son of Late Devan Mahto, resident of Village- Sahiyar Burj, P.S. + P.O. Rosera, District Samastipur.

.... .... Opposite Parties

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**Appearance :**

For the Petitioner/s : Mr. Manish Kumar no.13, Adv.  
Mr. Rohit Kumar, Adv.  
Miss. Nitu Kumari no.7, Adv.  
For the Opposite Party/s : Mr. Madan Kumar, A.P.P.  
Mr.Uma Shankar Prasad Singh, Adv.

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**CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR**

**ORAL JUDGMENT**

**Date: 20-09-2016**

Heard Sri Manish Kumar no.13, learned counsel for the petitioners, Sri Madan Kumar, learned Addl. Public Prosecutor and Sri Uma Shankar Prasad Singh, learned counsel, who has appeared on behalf of the complainant/Opp.Party no.2.

2. The petitioners, who are purchasers of a piece of land, have approached this Court, invoking its inherent jurisdiction under Section 482 of the Code of Criminal Procedure, with a prayer to quash an order dated 30.01.2012 passed in C.R. No.789/2008/ T.R. No.1918/2012 by the learned Judicial



Magistrate, 1<sup>st</sup> Class, Rosera (Samastipur) ( hereinafter referred to the “learned Magistrate”). By the said order, the learned Magistrate has taken cognizance of offence under Section 423 of the Indian Penal Code and directed for summoning accused persons including aforesaid two petitioners

3. Short fact of the case is that initially Opp.Party no.2 filed a written report before the Officer Incharge , Rosera Police Station disclosing therein that his own brother, namely, Jibach Mahto and Most. Gita Devi (wife of elder brother of the complainant/informant) without any right or title over the land measuring an area of 3 Kathas had transferred it to the petitioners by executing a sale deed. It was claimed that the land in question was gifted to the informant by his father. It was alleged that showing lesser consideration amount the sale deed was executed in favour of the petitioners. On the basis of written report, an F.I.R. vide Rosera P.S. Case No. 94 of 2006 was registered on 08.07.2006 for the offence under Sections 420, 467, 468, 471, 120(B)/34 of the Indian Penal Code against Jibach Mahto ( brother of the complainant), Most. Gita Devi (wife of elder brother of the complainant/informant) and others (including both petitioners). During investigation, the police found that it was out and out a civil dispute and, as such, final report i.e. Final Report



no.152/2006 dated 31.08.2006 was submitted. Meaning thereby that none of the F.I.R. named accused persons were forwarded as accused in Col. No.11 of the report. Subsequently, on 05.09.2006, Opp.Party no.2 filed a protest petition, which was treated as Complaint case and registered as C.R. No.789/2008. In the complaint case after examination of the complainant on S.A. and witnesses, the learned Magistrate took cognizance of offence under Section 423 of the Indian Penal Code and directed for summoning the accused persons. The said order has been assailed in the present petition.

4. At the very outset, learned counsel for the petitioners submits that the petitioners were completely unaware as to whether the complainant was having any right and title over the land or not. He submits that own brother of the complainant and one widow of elder brother of the complainant had executed the sale deed in favour of the petitioners after accepting consideration amount. He submits that as per record, the vendor was having full title as well as possession over the land in question. Thereafter, the petitioners agreed to purchase the said land and sale deed was executed after payment of entire consideration amount. By way of highlighting Annexure-2 i.e. a copy of the F.I.R., learned counsel for the petitioners submits that even the complainant in



information given before the police had accepted that a title suit preferred by his brother Jibach Mahto and Most. Gita Devi vide Title Suit No.38/2004 was already pending. He submits that if for the time being it is assumed that the father of the complainant had gifted the property in question to him it was purported to be done during pendency of a title suit and, as such, the claim of the complainant regarding title over the land in question was itself questionable. It has been argued that without establishing a case that the land in question was under his title and possession, the complainant was not at all authorized to make an allegation that his brother and widow of elder brother of the informant have fraudulently transferred the land to the petitioners. Learned counsel for the petitioners further submits that even if for the time being it is assumed that the vender was not having clear title or possession, in that event the complainant in normal course would have taken steps for declaring the sale deed as void by approaching the court of civil jurisdiction. However, it is not a case of complainant that he ever filed any title suit for declaring the sale deed as void. Learned counsel for the petitioners submits that the allegation, which has been made in the present complaint petition, was thoroughly investigated by a statutory Investigating Agency and once during investigation, the accusation was not found true and it

was considered as dispute of civil nature, on the basis of protest petition, the learned Magistrate was not required to proceed further and, as such order of cognizance is liable to be set aside.

5. Learned Addl. Public Prosecutor and Sri Uma Shankar Prasad Singh, learned counsel for the complainant have opposed the prayer of the petitioners. According to Sri Singh, learned counsel for the complainant, as per provision contained in Section 423 of the Indian Penal Code as well as contents of complaint petition and statements of witnesses during enquiry, it is specific case of commission of offence under Section 423 of the Indian Penal Code and, as such, according to learned counsel for the complainant, there is no illegality or irregularity in the order of cognizance.

6. Besides hearing learned counsel for the parties, I have also perused the materials on record. On going through the material on record, the Court is satisfied that initially the Investigating Agency had rightly submitted final report, which was accepted by the learned Magistrate by its order dated 03.07.2008. Since protest petition was filed by the informant and said protest petition was treated as complaint petition and a case was registered and thereafter, order of cognizance has been passed. In view of facts disclosed in the complaint petition as well as depositions, the

Court is of the opinion that there was no requirement for proceeding with the case.

7. Keeping in view the fact that the dispute was purely civil in nature, the order dated 30.01.2012 passed in C.R. No.789/2008/ T.R. No.1918/2012, so far petitioners are concerned, is hereby set aside. The petition stands allowed.

NKS/-

**(Rakesh Kumar, J)**

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