IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No. 796 of 2016

Arising out of PS. Case No. – 24 Year - 2015 Thana - Mehus District - SHEIKHPURA

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1. Vijay Kumar Singh, Son of Late Haro Singh
2. Lalit Vijay, Son of Vijay Kumar Singh
3. Chitranjan Kumar, Son of Kaushal Kishore Singh
4. Gautam Kumar, Son of Bhagwan Singh

All are Residents of Village - Mehus, Police Station - Mehus, District - Sheikhpura

.... Petitioners

Versus

1. The State of Bihar through the Director General of Police, Bihar, Patna
2. The District Magistrate, Sheikhpura
3. The Superintendent of Police, Sheikhpura
4. The Officer-in-Charge, Mehus Police Station, Sheikhpura
5. Sudha Devi, Wife of Kanhaiya Kumar, Residents of Village - Mehus Dakshin Tola, Police Station - Mehus, District - Sheikhpura

.... Respondents

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Appearance :

For the Petitioners	:	Mr. Manish Kumar, Advocate
For the Informant	:	Mr. Ajay Kumar Thakur, Advocate Mr. Shashank Shekhar, Advocate
For the Respondents	:	Md. Nashrul Hoda Khan, SC-1

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

C.A.V. JUDGMENT

Date:18-03-2017

The petitioners, above named, have invoked the criminal writ jurisdiction of this Court for quashment of FIR bearing Mehus Police Station Case No. 24 of 2015, dated 01.09.2014 registered for the offences under Sections 420, 467, 471, 406, 506, 509 and 511 of the Indian Penal Code.

2. The prayer is on the ground that the FIR discloses no offence on its bare perusal.

3. According to First Information Report lodged by Sudha Devi/respondent no. 5, the informant had purchased land through registered sale deed dated 16.08.2012 appertaining to Plot No. 3411

under Khata No. 691, Area 6¼ decimals and in Plot No. 6640 under Khata No. 692, Area 57 decimals from Most. Mundrika Devi of village Mehus, district Sheikhpura. One Ram Naresh Singh sold away the same properties through registered sale deed dated 24.11.2015 in favour of petitioner no. 2 Lalit Vijay just to cheat and defraud the informant. Petitioners Chitranjan Kumar and Gautam Kumar are witness on the sale deed executed by Ram Naresh Singh and they are alleged to have conspired in creation of the subsequent sale deed. On being asked by the informant for their misdeed aforesaid the accused persons committed abuse, assault and attempted to outrage the modesty of the informant.

4. Petitioner no. 1 Vijay Kumar Singh is the father of petitioner no. 2 Lalit Vijay and two other petitioners are witness on the registered sale deed.

5. Submission of the petitioners is that the matter is purely of civil dispute and civil suits are already going on between the parties with respect to the same land. According to the petitioners Title Suit No. 39 of 2010 is going on in the Court of learned Sub-Judge, Sheikhpura in between Ram Naresh Singh the vendor of the petitioners and Mundrika Devi the vendor of the informant, since prior to purchase by the informant and the petitioners. After the aforesaid purchase, the petitioners have filed Title Suit No. 50 of 2015 against informant Sudha Devi. The informant/respondent no. 5 has remedy in the civil suit also.

Further contention is that the allegation of commission of abuse and assault etc. are ornamental, just to pressurize in the land dispute. The occurrence, allegedly, took place on 20.12.2015 whereas the matter was reported on 30.12.2015 without any explanation for such delay. The next submission is that the petitioner no. 1 and 2 were not even present in the village on the alleged date of occurrence which would be evident from the reservation chart and boarding chart at Annexure-2.

6. On the other hand, learned counsel for the State/respondents submits that the investigation of the case is already complete and charge-sheet has already been submitted and prima facie offence have been found true during investigation, hence, this Court should be reluctant to interfere in the matter.

7. Learned counsel for the respondent no. 5 besides adopting the aforesaid submission of the State-respondents submits that there is specific allegation of abuse and assault committed by the petitioners and to have chased her up to her house. Further contention is that the plea of alibi cannot be considered to quash the FIR. The civil remedy is no bar for criminal prosecution if the offences are made out for criminal prosecution as well.

8. In **Md. Ibrahim** & **Ors.** vs. **State of Bihar** & **Anr.** reported in **2009(8) SCC 751**, the Apex Court had occasion to examine the ingredients of offences under Sections 420, 467, 471 and 504 of the

Indian Penal Code. The Hon'ble Apex Court observed that "the condition precedent for an offence under Sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds 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 false documents, in collusion with the other accused.

> "*10. An analysis of Section 464 of Penal Code shows that it divides false documents into three categories:-*
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> *10.1. 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.*
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> *10.2. 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.*
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> *10.3. 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.*

> *11. In short, a person is said to have made a 'false document', if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practicing deception, or from a person not in control of his senses."*

9. In the present case, the sale deed executed by Ram Naresh Singh in favour of petitioners is not a sale deed executed by Ram Naresh Singh in the capacity of authorization from the rightful owner or by pretending or impersonating that Ram Naresh Singh is the same person who is the real owner. Rather the sale deed had been executed by Ram Naresh Singh claiming his own title over the property, therefore, it cannot be said that Ram Naresh Singh executed a false document in collusion with the other petitioners, therefore, offences under Sections 467 or 471 are not made out on bare perusal of the First Information Report.

10. The Hon'ble Apex Court considered applicability of the offence under Section 420 of the Indian Penal Code in paragraph 13 and 14 of the aforesaid judgment and held as follows:-

> *"13. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows: (i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission; (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally*

induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property. To constitute an offence under Section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived: (i) to deliver any property to any person, or (ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

14. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner. As the

> *ingredients of cheating as stated in Section 415 are not found, it cannot be said that there was an offence punishable under Sections 417, 418, 419 or 420 of the Code.”*

11. A perusal of the aforesaid paragraphs makes it abundantly clear that even if anyone is assumed to be cheated in the transaction they are the petitioners who are purchaser for consideration and not the respondent no. 5. Therefore, offence of cheating is also not made out against the petitioners.

12. The offence of Section 406 of the Indian Penal Code is apparently not attracted which would be evident from the definition of the term criminal breach of trust in Section 405 of the Indian Penal Code which reads as follows:-

> *405. Criminal breach of trust. --- Whoever, being in any manner entrusted with property, or with any dominion over property, dishoneslty misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.*

13. Since other allegations are there in the First Information Report and FIR has been registered for offences under Sections 506, 509 and 511 of the Indian Penal Code also technically this Court does not want to interfere in respect to the aforesaid offences. The Court below

shall be at liberty to examine the applicability of the aforesaid offences at the stage of framing of the charge and shall pass a reasoned order.

14. Learned counsel for the petitioners placed reliance on the case of **G. Sagar Suri & Another** vs. **State of U.P. & Others** reported in **(2000)2 SCC 636** for his submission that quashing of criminal prosecution is permissible even when application for discharge of the accused was pending with the Trial Judge. Such power can be exercised to prevent the abuse of the process of the court. Learned counsel for the petitioners has further relied on case of **INDIAN OIL CORPN.** versus **NEPC INDIA LTD. & OTHERS** reported in **(2006)6 SCC 736** for his submission that criminal proceedings should not be allowed to stand if it is obvious on the facts of the case that the informant wants to revenge scores or on account of an impression that civil law remedies are time consuming and do not adequately protect the interest of the prosecutor.

15. The above case laws are applicable in the facts and circumstances of this case. In view of the judgment in G. Sagar Suri (**supra**), there is no merit in the submission of learned counsel for the respondents that since the case is at the stage of trial, the FIR cannot be quashed even if no case is made out. Moreover, the matter appears to be of civil dispute in its true nature.

16. Further there is no merit in the submission of the petitioners on the ground of their plea of alibi, to quash the FIR. Such

defence may be considered at the stage of trial.

17. In view of the conclusions above, this writ application is partly allowed to the extent that FIR of Mehus Police Station Case No. 24 of 2015 stands quashed so far prosecution for offences under Sections 420, 467, 471 and 406 of the Indian Penal Code is concerned.

(Birendra Kumar, J.)

Kundan

AFR/NAFR	A.F.R.
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