

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.2186 of 2015

Arising Out of PS.Case No. -71 Year- 2014 Thana -KATEYA District- GOPALGANJ

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1. Ramautar Sah, Son of Late Bhagwan Sah
2. Arjun Jaiswal
3. Bindhyachal Jaiswal
4. Sugreev Jaiswal
All 2 to 4 are sons of Bhola Prasad Jaiswal
5. Bhola Prasad Jaiswal Son of Late Gokhul Sah,
All are Residents of village - Tateya Bazar, P.S- Kateya, District - Gopalganj.
..... Petitioner/s

Versus

1. The State of Bihar
2. Raju Prasad Jaiswal, son of Ram Bachan Prasad Resident of village - Kateya
Bazar, P.S- Kateya, District - Gopalganj.
..... Opposite Party/s

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Appearance:

For the Petitioner/s : Mr.
For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT
Date: 28-03-2017

Heard both sides.

The petitioners filed this petition for quashing the order dated 06.11.2014 passed in Kateya P.S. Case No. 71 of 2014 corresponding to Trial No. 5412 of 2014 whereby the learned Judicial Magistrate, Gopalganj took cognizance under Sections 420, 467, 468, 471 and 34 of the Indian Penal Code.

The informant in his complaint petition alleged that Plot No. 1752, Khata No. 181, Area 7 Katha situated in village Kateya, District-Gopalganj is owned by him. The market of accused nos. 2 to 5 is situated adjacent to the aforesaid plot. Ramautar Sah (petitioner no.1) filed a petition before the Superintendent of Police,



Gopalganj for institution of a criminal case with regard to the same land, but he filed an affidavit on 23.05.2000 stating therein that he did not have any title over the Plot No. 1752, but Ramautar Sah executed a sale deed on 12.11.2012 in favour of accused nos. 2 to 4 (petitioner nos. 2 to 4) with regard to the area of five dhurs of plot no. 1752. The informant further alleged that Ramautar Sah (petitioner no.1) has got no title and possession over the land, but he executed the sale deed fraudulently in favour of aforesaid accused persons only to cheat him. The police took up investigation and after completion of the investigation submitted a report, on the basis of which learned Judicial Magistrate took cognizance of the offence under Sections 420, 467, 468, 471 and 34 of the Indian Penal Code on 06.11.2014.

The petitioners being aggrieved by the aforesaid order filed this petition for quashing the order on the ground that no offence under any of the aforesaid sections is made out on bare perusal of the F.I.R. It is submitted that Ramautar Sah (petitioner no.1) is the son of the sister of Ram Bachan Prasad, the father of the informant and he has got share in the aforesaid land. Smt. Gulabi Devi, wife of Late Shankar Sah and her sons, namely, Omprakash Sah, Rajkumar Sah and Durgesh Sah filed Title Suit No. 224 of 1998 for partition of the property against Ram Chandra Sah and Ram



Bachan Sah, sons of Shravan Sah and two others, but Ramautar Sah (petitioner no.1) was not made party in the aforesaid partition suit. The suit was dismissed on 05.04.2010. Thereafter, Ram Chandra Prasad and his brother, namely, Ram Bachan Prasad filed Title Suit No. 93 of 2002 for right of easement. In the aforesaid case, Ramautar Sah (petitioner no.1) filed an intervention petition and he was made party in the aforesaid suit as defendant no. 11.

Learned counsel for the petitioners submits that petitioner no.1 did not commit any fraud and the dispute is of civil nature.

In reply to the aforesaid submission, learned counsel for the opposite party no.2 and learned APP submitted that petitioner no.1 earlier filed a petition for institution of a criminal case before the superintendent of police and he himself filed another petition on affidavit that he has got no title over the plot no. 1752 but even then he executed a sale deed in favour of petitioner nos. 2 to 4.

Of course petitioner no.1 asserted his claim that he has got title but he did not produce any cheat of papers before the investigating officer and the Investigating Officer thoroughly investigated the case and submitted a report under Section 173(2) of the Code of Criminal Procedure finding the case true under Sections 420, 467, 468, 471 and 34 of the Indian Penal Code.



Learned Judicial Magistrate after perusal of the materials collected during the course of investigation took cognizance. Therefore, I do not find any merit in this petition and, accordingly, this quashing petition is dismissed. However, it is made clear that the petitioners may raise all these points at the time of framing of charge and the learned Judicial Magistrate shall consider the submissions on its own merit and pass a reasoned order without being prejudiced by this order.

(Prabhat Kumar Jha, J)

Mishra/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	05.05.2017
Transmission Date	05.05.2017

