

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.22445 of 2013

Arising Out of PS.Case No. -2423 Year- 2011 Thana -GOPALGANJ COMPLAINT CASE District-
GOPALGANJ

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1. Shamim Naz W/O Irfan Ahmad Resident Of Village- Dharmchak, P.S.-
Uchakagawn, District- Gopalganj. At Present Residing At Mohalla- Hospital Road
Siwan, P.O. + P.S.- Siwan, District- Siwan

.... Petitioner/s

Versus

1. The State Of Bihar

2. Kamrujjama Ahmad S/O Late Paigamber Husain Resident Of Mohalla C- 181/B,
Shaheen Bag, Jamiyan Nagar, New Delhi- 25

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Uday Pratap Singh

Mr. Sanjeev Kumar

For the State

: Dr. Rabindra Kumar,APP.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 10-04-2017

The present petition has been filed for quashing the entire criminal proceeding including the order taking cognizance dated 26-11-2012 passed by Sri Ajay Kumar Mall , learned Judicial Magistrate-Ist Class, Gopalganj in Complaint Case No. 2423 of 2011, by which and whereunder, the learned Magistrate took cognizance against the petitioner U/Ss 3 of the Benami Transaction (Prohibition) Act, 1988.

Heard learned counsel appearing for opposite party No. 2.
No one appears on behalf of the petitioner on repeated call.

It has been submitted on behalf of the petitioner that the instant criminal proceeding against him is a malicious prosecution. The complainant was not examined in the lower court on SA. No



offence is made out. Notice was sent to the opposite party No. 2 and the same was validly served but none appeared on behalf of opposite party No. 2.

From the complaint petition, it appears that the complainant has alleged that he has purchased 200 sq. yard land from 9 Khesera as mentioned in the complaint petition on 23-10-1979. Thereafter, she has sold the aforesaid 200 yard lands on 31-08-2005 to Rabiya Khan. It is alleged by the complainant that on 11-08-2011, all the accused persons levelled allegation that sale deed of the complainant was Benami transaction which was purchased by late Pagamber Hussain in the name of complainant. The complainant obtained the certified copy of Partition Suit No. 365 of 2011 and then learnt about the conspiracy of accused persons. The court below by the impugned order after holding inquiry, found prima facie case u/S 3 of the Benami Transaction Act against the petitioner and other three accused persons.

It has been submitted on behalf of the petitioner that the court below has mentioned in the impugned order that the complainant was examined on SA but SA of the complainant was not recorded in the lower court. It is stated that only one witness namely, Kamlesh Tewary was examined during inquiry as C.W. 1. The statement of the aforesaid witness has been enclosed vide Annexure-



2. That witness has stated in his reply to the court question that he has no knowledge about the disputed land. He has obtained the certified copy of the petition of T.S. No. 365 of 2011 on the direction of the complainant.

Section-3 of the Benami Transaction (Prohibition) Act 1988 states as follows:

Prohibition of benami transactions:- (1) No person shall enter into any benami transaction.

(2) Nothing in sub-section(1) shall apply to-

(a) the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter;

(3) Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973(2) of 1974), an offence under this section shall be non-cognizable and bailable.

The complainant did not appear in court below to record his solemn affirmation. The object of examination of complainant and his witnesses u/S 200 Cr.P.C. is to ascertain whether there is prima



facie case against the petitioner-accused of the offence in the complaint and to prevent the issue of process on a complaint which is either false or vexatious or intended only to harass such a person. Such examination is provided to find out, whether there is or not sufficient ground for proceeding.

From perusal of the statement of Kamlesh Tiwary (C.W.- 1) recorded during inquiry u/S 202 of the Cr.P.C., this court finds that there was no any material before the court below to proceed u/S 3 of the Benami Transaction (Prohibition) Act, 1988.

Therefore, the order of cognizance including the continuance of entire criminal proceeding against the petitioner is an abuse of process of law. Accordingly, the impugned order dated 26-11-2012 passed by Sri Ajay Kumar Mall , learned Judicial Magistrate-Ist Class, Gopalganj in Complaint Case No. 2423 of 2011 along with entire criminal proceeding is quashed with respect to the petitioner.

This petition is allowed.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	03-05-2017
Transmission Date	03-05-2017

