

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.35989 of 2013

Arising Out of PS. Case No. -1114 Year- 2007 Thana -PATNA COMPLAINT CASE District- PATNA

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USHA KUMARI W/O LATE BHIM KUMAR RESIDENT OF MOHALLA-
RAMJICHAK, P.S- DIGHA, DISTRICT- PATNA

.... PETITIONER/S

VERSUS

1. THE STATE OF BIHAR.
2. SURAJ PRASAD, SON OF LATE TEK NARAYAN RAI, RESIDENT
OF VILLAGE-RAMJEE CHAK YADAV GALI, P.O.-BATA GANJ, PS.-
DIGHA, DISTRICT-PATNA.

.... OPPOSITE PARTY/S

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Appearance:

For the Petitioner/s	:	Mr. Ajay Kumar Thakur, Adv. Mrs. Babita Kumari, Adv.
For the Opposite Party/s	:	Mr. Satyendra Prasad, Adv. Mr. Umesh Kumar Verma, Adv.
For the State	:	Mr. P.K. Pandey, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

C.A.V. ORDER

Date: 28-01-2017

Petitioner Usha Kumari has challenged order dated 19.08.2010 passed by Sub-Divisional Judicial Magistrate, Danapur, Patna in connection with Complaint Case No.1114(c) of 2007 whereby and whereunder she along with others has been summoned to face trial for an offence punishable under Sections 423,418/34 of the IPC.

2. Opposite Party No.2, Suraj Prasad filed complaint petition, against altogether eleven persons including the Karamchari, Circle Inspector, C.O., Danapur divulging the fact that Mahavir Raut and Rambilash Raut had purchased Khesra No.852, Area 129 decimal, Khesra No.867, 67 decimal corresponding to Khata No.258 from Baijnath Singh, Jagarnath Singh vide sale deed dated 27.04.2015. They have also purchased 25 decimal from Harihar Mishra on the same date (Survey Plot number not mentioned). Then it has been averred that Mahavir Raut and Rambilash Raut orally partitioned



whereunder Mahavir got 98 decimal from Plot No.852, Khata No.258, 12.5 decimal from Plot no.853, Khata No.274 and in likewise manner Rambilash got 31 decimal from Khata No.852 and 67 decimal from Khata No.867, 12.5 decimal from Plot No.853. Furthermore, it has been asserted that Gulab Chandra Raut, grandfather of complainant purchased 62 decimal of Plot No.866 lying under Khata No.268, from Jai Govind and others vide sale deed dated 19.05.2017 with boundary South-Rambilash Gwala. In the aforesaid sale deed Ram Gulam Raut, grandfather of accused Laxmi Rai stood as a witness. Then, it has been submitted that Title Suit No.56 of 1964/ 54 of 1974 Tek Narayan Rai Versus Rambilash & Others relating to 33.5 decimal land of Khesra No.867 was drawn up which was decreed in favour of Tek Narayan Rai and accordingly, delivery of possession was effected by the Civil Court to that extent. It has also been stated that a proceeding under Section 145 Cr.P.C. was drawn up with regard thereof wherein also order was passed in favour of Tek Narayan Rai. On the basis thereof, as has been pleaded Tek Narayan Rai came over 67 decimal, Plot No.867 and after his death his successors are over the land peacefully.

3. Then it has been stated that 18 decimal of survey plot no.852, 7 decimal of survey plot no.853 were acquired by government under L.A. Case No.81/1976-77 and with regard thereto, award was prepared in name of Tek Narayan Rai over which an objection was raised by Ram Narayan Rai, Sita Ram Rai, brother of Laxmi Rai which was rejected by the Special Judge, Land Acquisition under Case no.52/1979 and payment was made in favour of Tek Narayan Rai. Then it has been submitted that 5.5 decimal of plot no.853, 13 decimal of Plot no.852 were acquired by the government for construction of Railway Bridge over Ganga and for that L.A. Case No.22/2002 was registered wherein award was prepared in name of Tek Narayan Rai.



4. Furthermore, it has been stated that in a proceeding under Section 145 Cr.P.C. bearing Misc. Case No.10(m)/1980 Lala Rai during course of his evidence had admitted that Survey Plot No.867, Area 67 decimal is not under his possession. In Mutation Case No.2284/1989 during course of filing of an objection at para-15 it has been asserted that Janak Rai got 56 decimal in partition relating to survey plot no.863, but, additional collector during course of deciding revision case no.98 of 1980-81 /110 of 1983-84 had held that Janak Rai got 56 decimal in Survey Plot No.863.

5. Then it has been stated that the accused persons hatched a conspiracy in order to cause prejudice to the interest of complainant and further, to grab his land Janak Rai, his son Bhim Kumar, wife Usha Kumari @ Jaya Kumari, brother of Laxmi Rai had executed six sale deeds in favour of Satya Narayan Singh on different occasions about 23,24 years ago relating to Plot No.867, Area 33 Kattha while in original sale deed there is reference of plot no.867 area 67 decimal. It has also been stated that Vijay Kumar, Vinay Kumar and Bal Kishun Rai, Syed Hafij happens to be witness while Kailash Prasad Jha is a deed writer. It has further been alleged that on the basis of the aforesaid sale deed, Satya Narayan Singh applied for mutation before C.O., Danapur (accused no.11) and after taking in their collusion, interpolated in the notice. However, after coming to know about the same, complainant appeared and objected. Furthermore, he had prayed for calling for Complaint Case No.226 of 2003 from the court of S.K. Dixit, Judicial Magistrate, Danapur, which was rejected by the C.O. It has also been asserted that the C.O., Danapur declined to entertain supplementary objection whereunder there was specific disclosure that the document happens to be forged, fabricated. Furthermore, complainant also asked for an adjournment to procure relevant document which could be filed but time petition was rejected. Then, thereafter



it has been stated that on account of election the offices were not running in usual course. When complainant came, he was informed that record had already been fixed for order and was available at the end of the C.O. Complainant tried repeatedly to obtain certified copy of order which he obtained and on the basis thereof, he came to conclusion that without hearing argument on his behalf as well as without giving an opportunity to produce the relevant documents order has been passed. It has also been disclosed that the sale deed dated 27.04.2015 in the name of Mahavir Raut had already been declared forged by the Registrar, Patna.

6. On presentation of aforesaid complaint, S.A. of complainant was recorded, witnesses were examined during course of an inquiry and subsequently thereof, by the order impugned only petitioner along with Laxmi Rai and Satya Narayan Singh have been summoned to face trial for an offence punishable under Sections 423, 418, 34 of the IPC by the order impugned, hence this petition.

7. Heard learned counsel for the petitioner, learned counsel for the opposite party, as well as learned A.P.P.

8. While raising grievances against the order impugned, it has been submitted on behalf of petitioner that from the complaint petition itself it is evident that it happens to be out and out a civil dispute. It has further been submitted that it is not under dispute nor there happens to be any kind of denial at the end of the petitioner including others that they have not executed document in favour of Satya Narayan Singh and so, unless and until petitioner is found and declared unconnected with the aforesaid survey plot and further, were not at all authorized to execute sale deed coupled with the fact that sale deed executed by them happens to be forged and fabricated in the eye of law, so declared by the court, neither prosecution under Section 423 IPC would be



attracted and in likewise manner, 418 of the IPC. Moreover, criminal court has got no power to annul a registered document.

9. Furthermore, it has been submitted that three years limitation is prescribed for getting a registered document annulled. Malafidely, with the ulterior motive Opposite Party No.2 did not disclose the date of the document although had mentioned that it was executed and registered 23 and 24 years back. It has also been submitted that with regard to registration of the document, judicial notice is to be taken and so, the Opposite Party No.2 was under obligation to satisfy in order to rebut the event of judicial notice. Apart from this, it has also been submitted that from narration of the complaint petition itself it is evident that as the Opposite Party No.2 lost the same before the C.O., on account thereof, instant case has been filed. Furthermore, it has also been submitted that issue was taken before the Hon'ble High Court under CWJC No.5746/1985 (Annexure-H) which was dismissed as withdrawn at the end of the father of the Opposite Party No.2 himself. Furthermore, substantiated their plea with the judicial pronouncement reported in (2009) 7 SCC 495, (2009) 8 SCC 751.

10. On the other hand, learned counsel for the Opposite Party No.2 as well as learned A.P.P. while refuting the submission having been made on behalf of petitioner has submitted that at the time of taking cognizance, only prima facie material has to be seen and as the same is found properly been placed at the Opposite Party No.2, on account thereof, order impugned is justified, legal and is accordingly, fit to be conferred. It has also been submitted that entitlement of Opposite Party No.2 being owner of the property could not be doubted in the background of other ancillary documents the details of which had already been incorporated and so, encroaching upon right of the Opposite Party No.2 illegally by way of executing a sale deed, certainly



attracts prosecution and for that, complaint was legally maintainable and in likewise manner, the learned lower court perceiving prima facie material on the basis of the statement of the witnesses, so examined, during course of an inquiry, justify the order impugned. So submitted that instant petition is fit to be rejected. Also relied upon 1999(2) BLJ 206, 2002 PCCR(1) 77 (SC).

11. Opposite Party No.2 is the son of Tek Narayan who indulged with the petitioner during course of mutation proceeding which ultimately come to this Court under CWJC No.5746 of 1985 (Annexure-H). The relevant portion of the order dated 14.02.1986 passed in CWJC No.5746 of 1985 is quoted below:

“As the order on mutating the name of respondent no.6 and 7 itself has been challenged at different forums, it is expected that, in future, if any dispute arises in respect of the plots in question, the Court concerned shall examine the right, title and interest of the contesting parties, on the basis of the materials produced on their behalf and not solely on the order of mutation.”

12. That being so, the competent court was vested with the power to ascertain right title and interest of the respective parties with regard to land under dispute and during course thereof, the validity of the document in question could be ascertained. So, unless and until there happens to be proper adjudication of entitlement coupled with genuineness of the sale deed in the background of the order passed by the High Court as referred above (Annexure-H), the criminal court being denuded on that very score was not at all competent enough either to identify the petitioner being stranger to the property and in likewise manner, the document being illegal, fraudulent in the eye of law. Apart from this, from the complaint petition itself it is evident that Opposite Party No.2 had already admitted presence of alleged sale deed since 23-24 years ago. Furthermore, the parties have loggers their heads for the last sufficient time under mutation proceeding. There also happens to be



silence even after Annexure-H any kind of legal step having been taken at the end of the Opposite Party No.2 for cancellation of alleged sale deed and in the aforesaid background having the statutory period of three years duly exhausted.

13. So far ambit and scope of 482 Cr.P.C. is concerned recently it has been discussed in ***Amit Kapoor v. Ramesh Chander*** reported in **(2012) 9 SCC 460**.

“27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to



predominantly give rise and constitute a “civil wrong” with no “element of criminality” and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed *prima facie*.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised *ex debito justitiae* i.e. to do real and substantial justice for administration of which alone, the courts exist.

[Ref. *State of W.B. v. Swapan Kumar Guha* (1982) 1 SCC 561; *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre* (1988) 1 SCC 692; *Janata Dal v. H.S. Chowdhary* (1992) 4 SCC 305; *Rupan Deol Bajaj v. Kanwar Pal Singh Gill* (1995) 6 SCC 194; *G. Sagar Suri v. State of U.P.* (2000) 2SCC 636; *Ajay Mitra v. State of M.P.* (2003) 3 SCC 11; *Pepsi Foods Ltd. v. Special Judicial*



Magistrate(1998) 5 SCC 749; State of U.P. v. O.P. Sharma(1996) 7 SCC 705; Ganesh Narayan Hegde v. S. Bangarappa(1995) 4 SCC 41; Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque(2005) 1 SCC 122; Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. (2000) 3 SCC 269; Shakson Belthissor v. State of Kerala(2009) 14 SCC 466; V.V.S. Rama Sharma v. State of U.P. (2009) 7 SCC 234; Chunduru Siva Ram Krishna v. Peddi Ravindra Babu(2009) 11 SCC 203; Sheonandan Paswan v. State of Bihar(1987) 1 SCC 288; State of Bihar v. P.P. Sharma AIR 1991 SC 1260; Lalmuni Devi v. State of Bihar (2001) 2 SCC 17; M. Krishnan v. Vijay Singh(2001) 8 SCC 645; Savita v. State of Rajasthan(2005) 12 SCC 338 and S.M. Datta v. State of Gujarat(2001) 7 SCC 659.]

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence.

14. In *Kailash Chandra Agrawal & Anr. v. State of U.P. & Ors.*

(Criminal Appeal No.2055 of 2014 decided on 6.9.2014) (reported in **2014 AIR SCW 6152**), it was observed:

“10. The parameters for quashing proceedings in a criminal complaint are well known. If there are triable issues, the Court is not expected to go into the veracity of the rival versions but where on the face of it, the criminal proceedings are abuse of Court’s process, quashing jurisdiction can be exercised. Reference may be made to K. Ramakrishna and Ors. v. State of Bihar and Anr. [(2000) 8 SCC 547: (AIR 2000 SC 3330)], Pepsi Foods Ltd. and Anr. v. Judicial Magistrate and Ors [(1998) 5 SCC 749 : (AIR 1998 SC 128)], State of Haryana and Ors. v. Ch. Bhajan Lal and Ors. [(1992) Suppl 1 SCC 335: (AIR 1992 SC 604)] and Asmathunnisa v. State of A.P. represented by the Public Prosecutor, High Court of A.P., Hyderabad and Anr. [(2011) 11 SCC 259 :(AIR 2011 SC 1905)].”

15. From the material available on record, it is apparent that there happens to be dispute over status as well as entitlement of the parties which requires to be properly ascertained in light of order of the High Court



(Annexure-H). That being so unless and until, competent court decides the issue, criminal prosecution will be nothing but unsure of power of the court. In the background of presence of High Court order (Annexure-H), the case law cited on behalf of O.P. No.2 is not all found applicable. Consequent thereupon, the order impugned is set aside. Petition is allowed.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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