

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.40464 of 2013

Arising Out of PS.Case No. -98 Year- 2008 Thana -KAHALGAON District- BHAGALPUR

- =====
1. Umesh Prasad Singh Son Of Late Raj Mani Singh R/O Nand Lalpur, P.S.-Kahalgaon, District-Bhagalpur
 2. Karuna Singh Wife Of Umesh Prasad Singh R/O Nand Lalpur, P.S.-Kahalgaon, District-Bhagalpur
 3. Gopal Prasad Singh Son Of Late Indrajeet Singh R/O Patgarhi, P.S.-Sabour, District-Bhagalpur
 4. Gayatri Devi Wife Of Santosh Kumar Singh R/O Devra, P.S.-Devra, District-Komadi Allahabad (U.P.)

.... Petitioner/s

Versus

1. The State Of Bihar
2. Dinesh Prasad Singh Son Of Late Rajmani Singh R/O Village-Nandlalpur, P.S.-Kahalgaon, District-Bhagalpur

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Praveen Kumar

For the Opposite Party/s : Mr. Pronoti Singh (App)

=====

CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL ORDER

7 13-04-2017 The instant criminal miscellaneous has been filed for quashing the order taking cognizance dated 01.08.2013 passed by the learned Chief Judicial Magistrate, Bhagalpur in Kahalgaon P.S. Case No. 98 of 2008 under Sections 467, 468, 471, 420, 120-B, 504 and 506 IPC.

Heard the learned counsel for the petitioners, learned counsel for the informant and learned A.P.P. for the State.

The complainant/informant is own brother of petitioner



no. 1. Petitioner no. 2 is wife of petitioner no. 1 and other petitioners are also family members of the informant.

On the basis of Complaint Case No. 538 of 2008, the case has been instituted with an allegation that the father of the complainant namely, Raj Mani Singh fell down from the stair-case on 15.09.2002 and his bone of waist was broken and complainant sent his father to Bhagalpur for treatment with petitioner nos. 1 and 2 in the Clinic of Somen Chatterjee. Co-accused Gayatri Devi went to Bhagalpur to see her father and she lived with petitioner nos. 1 and 2 and she also became under conspiracy and thereafter deeds of gift were executed with reference to the ancestral property and the same was executed by Raj Mani Singh, father of the informant. Raj Mani Singh has not executed the deeds of gift and it is fraudulent act of all the accused persons. The aforesaid complaint was registered at Kahalgaon P.S. Case No. 98 of 2001 and after completing investigation chargesheet was submitted and accordingly cognizance was taken.

Submission on behalf of the petitioners is that complainant/informant has filed Title Suit No. 162 of 2008 in the Court of Sub-judge-1st, Bhagalpur for declaring the deeds of gift as illegal, forged, collusive and not binding to the plaintiffs as well as for other reliefs. In that title suit written statement has been filed on



behalf of defendants and, as such, the criminal proceeding is abuse of the process of the court as well as the process of the law. When parallel proceeding in competent civil court is going on, then this criminal proceeding is fit to be quashed.

In criminal case it cannot be adjudged that deeds of gift is illegal or inoperative and for that civil court is competent for the same. The dispute is purely of civil nature and, as such, this criminal miscellaneous is fit to be allowed.

On the other hand learned A.P.P and learned counsel for the informant submits that police after completing investigation has submitted chargesheet and in the case diary there are sufficient materials and then cognizance has been taken and at the time of taking cognizance the court is required only to see as to whether, on the basis of materials collected in investigation, prima-facie case is made out or not and the learned C.J.M. after finding prima facie case to be made out, has passed the impugned order which does not require any interference by this Court.

After considering the submissions urged at the Bar going through the record and perusing the plaint and written statement of Title Suit No. 162 of 2008 which are annexed with supplementary affidavit it is manifest that Civil Suit is going on between the parties in competent court and, as such, this parallel



criminal proceeding is the abuse of process of court and process of law. Criminal litigation in the garb of civil suit will be completely abuse of the process of the Court.

In the result, order dated 01.08.2013 passed by the learned C.J.M. Bhagalpur in Kahalgaon P.S. Case No. 98 of 2008 is hereby quashed.

Accordingly, this criminal miscellaneous is hereby allowed.

(Jitendra Mohan Sharma, J)

sushma/-

U		T	
---	--	---	--

