

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.8167 of 2012

Arising Out of PS.Case No. -97 Year- 2011 Thana -Sherghati District- GAYA

- =====
1. Shashi Shekhar Singh S/o Rama Shankar Singh
 2. Tilakdhari Singh S/o Ram Batal Singh
 3. Surendra Singh S/o Alte Jagdish Singh
 4. Parwati Devi W/o Satendra Singh

All are resident of village - Thaman Bigha, P.S- Sherghaty, Distt.- Gaya

.... Petitioner/s

Versus

1. The State of Bihar
2. Krishna Prasad Singh S/o Late Bachu Singh, resident of village - Thaman Bigha, P.S- Sherghaty, Distt.- Gaya.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Nand Kishore Pd. Sinha, Advocate
For the Informant : Mr. Md. Javed Jafar Khan, Advocate
For the State : Mr. Narendra Kr. Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 06-09-2017

Ref: Interlocutory Application No. 978 of 2017

In view of supplementary affidavit duly sworn by the son of petitioner no. 1 and Death Certificate of petitioner no. 1 annexed with the Interlocutory Application No. 978 of 2017, the name of Rama Shankar Singh (petitioner no. 1) is ordered to be expunged from this criminal miscellaneous application. The names of remaining petitioners shall be renumbered and read accordingly.

The interlocutory application is allowed and disposed of.



Criminal Miscellaneous No.8167 of 2012

Heard both sides and perused the record.

This criminal miscellaneous application under section 482 of the Code of Criminal Procedure has been filed to quash the order dated 08.11.2011 passed by the learned Sub-Divisional Judicial Magistrate, Sherghati in Sherghati Police Station Case No. 97 of 2011 whereby and whereunder the learned Magistrate finding *prima facie* case, took cognizance for the offences under sections 341, 323, 419, 420 and 506/34 of the Indian Penal Code against the petitioners.

The opposite party no. 2 lodged an FIR with the S.H.O. of Sherghati Police Station alleging therein that on 09.04.2011 all the petitioners along with some unknown, attempted to get a sale deed executed fraudulently impersonating a lady namely, Parwati Devi with respect to 94 decimal of plot no. 1884, which was purchased by him vide sale deed no. 967 dated 19.02.2010. The informant on getting such information, reached at Registration Office and protested whereupon the accused persons demanded *Randari* to the tune of Rs.1,00,000/- and snatched Rs. 5,000/- from his possession. The matter was investigated and Police submitted charge sheet against these petitioners. The learned Magistrate after perusing the case diary, found *prima facie* case and took cognizance against these petitioners as stated above.



The learned counsel for the petitioners submits that from the allegation, no offence under sections 341, 323, 419, 420 and 506/34 of the Indian Penal Code is made out. The ancestor of opposite party No. 2 had transferred an area of 94 decimal land of R.S. plot no. 1884 corresponding to C.S. Plot no. 1345 by virtue of two registered sale deeds dated 15.07.1944 and 16.01.1945 in favour of the ancestor of petitioners. The family of these petitioners got their names mutated and came in possession over the said land. After the death of Vendor of these petitioners, his son Kedar Singh fraudulently executed the sale deed dated 19.02.2010 with respect to the land of these petitioners in favour of the opposite party no. 2. The opposite party no. 2 did not acquire any right, title and possession over the land in question on the basis of his sale deed dated 19.02.2010. The petitioners' family was coming in possession over the said land, as the same was already sold by the father of Kedar Singh. The petitioners have filed a Title Suit no. 481 of 2011 in the court of learned Sub-Judge-I, Gaya for declaration of their right, title and possession over the said land and also for declaration with respect to the sale deed of opposite party no. 2, as fraudulent, illegal and void. The dispute between the parties is purely a civil dispute. It has been further submitted that a criminal case was also lodged by Rama Shankar Singh, the father of petitioner no. 2 Shashi Shekhar Singh against the



opposite party no. 2 and his family members, vide Sherghati Police Station Case No. 98 of 2011, which after trial, ended in acquittal. The learned Magistrate without applying judicial mind, has taken cognizance and so, the impugned order is fit to be quashed.

On the other hand, the learned counsel for the opposite party no. 2 and learned Additional Public Prosecutor opposed the submission.

On perusal of complaint petition, impugned order and the documents on record, I find that the petitioners claim the said land by virtue of registered sale deed, which was executed in the year 1944-45. The opposite party no. 2 claims the said land by virtue of registered sale deed dated 19.02.2010 executed by the descendant of the Vendor of the petitioners. The petitioners have already filed a Title Suit No. 481 of 2011 for declaration of their right, title and possession over the said land. The dispute between the parties appears to be purely a civil dispute. In the complaint petition, I do not find any ingredient of committing fraud and cheating against any of the petitioners.

In ***Mohammed Ibrahim and another vs. State of Bihar and another (2009) 8 SCC 751***, the Hon'ble Supreme Court has observed in paragraph 23 as under:

“When we say that execution of a sale deed by a



person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is, the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint.”

The present case is squarely covered by the principle decided by the Hon’ble Apex Court.

Having regard to the facts and circumstances of the case and taking into consideration the law laid down by the Supreme Court in the decision quoted above, the instant application deserves to be allowed. Accordingly, this criminal miscellaneous application is allowed and the order dated 08.11.2011 passed by the learned Sub-Divisional Judicial Magistrate, Sherghati in Sherghati Police Station Case No. 97 of 2011 as well as criminal prosecution of these petitioners is hereby quashed.

Mahesh/-

(Sanjay Kumar, J)

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	24.09.2017
Transmission Date	24.09.2017

