IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.21046 of 2012

Arising Out of PS.Case No. -0 Year- null Thana -null District- SAMASTIPUR

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1. Raj Kishore Singh @ Bablu Singh S/O Kedar Singh R/O Village- Pagara, P.S.- Dalsingsarai, Distt.- Samastipur.
2. Sobha Kant Ray S/O Ganeshi Ray R/O Village- Dhepura, P.S.- Dalsingsarai, Distt.- Samastipur.
3. Ram Babu Roy S/O Singhishwar Roy R/O Village- Harishankarpur Ashischak, P.S.- Dalsingsarai, District- Samastipur.
4. Anita Kumari W/O Raj Kishore Singh @ Bablu Singh R/O Village- Pagara, P.S.- Dalsingsarai, Distt.- Samastipur.
5. Shanti Devi W/O Krishandev Mahto R/O Village- Dahodarpur, P.S.- Bibhutipur, Distt.- Samastipur
6. Vijay Kumar S/O Krishnadev Mahto R/O Village- Dahodarpur, P.S.- Bibhutipur, Distt.- Samastipur
7. Sanjay Mahto S/O Krishnadev Mahto R/O Village- Dahodarpur, P.S.- Bibhutipur, Distt.- Samastipur
8. Ram Prakash Roy S/O Sri Jagdish Roy R/O Village- Depura, P.S.- Dalsingsarai, Distt.- Samastipur.
9. Ashok Kumar Singh @ Ashok Singh S/O Raghuber Singh R/O Village- Chiranjevipur, P.S.- Bachhawara, Distt.- Begusarai
10. Chandrakala Devi W/O Sri Raghuber Singh R/O Village- Chaklokman, P.S.- Dalsingsarai, Permanent Address Vil.- Chiranjuvipur, P.S.- Bachhwara, Distt.- Begusarai
11. Suresh Mahto S/O Sri Shiv Nandan Mahto R/O Village- Ghat Nawada, P.S.- Dalsingsarai, District- Samastipur
12. Munni Lal Mahto S/O Maharaj Mahto R/O Village- Pow, P.S.- Dalsingsarai, Distt.-Samastipur
13. Lakhan Singh S/O Paltu Singh R/O Village- Basdiya, P.S.- Dalsingsarai, Distt.- Samastipur.
14. Krishna Devi Mahto S/O Rappu Mahto R/O Village- Dahodarpur, P.S.- Bibhutipur, Distt.- Samastipur

.... Petitioners

Versus

1. The State Of Bihar
2. Navin Kumar Yadav S/O Rameshwar Yadav R/O Village-Badhisethu, P.S.- Muffasil, Distt.- Begusarai.

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Mukesh Kumar No.1, Advocate

For the Opposite Parties : Mr. Yogesh Chandra Verma, Senior Advocate
Mr. Om Prakash, Advocate
Mr. Uday Shankar Pandey, Advocate

For the State : Jharkhandi Upadhyay, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT
Date: 26-04-2017

This quashing petition has been preferred against the cognizance order dated 12.8.2011 passed by learned S.D.J.M., Dalsingsarai in connection with Dalsingsarai P.S. Case No.101 of 2010 whereby he has taken cognizance of the offence under Sections 420, 467, 468, 471, 323 and 504 of the Indian Penal Code.

2. A brief fact giving rise to this application is that one Navin Kumar Yadav, opposite party no.2 of this petition filed a complaint case before the court of C.J.M., Samastipur, the same was sent to the police under Section 156(3) of Cr.P.C. for registering F.I.R. and after investigating submitted charge sheet.

3. The allegation in the complaint in brief is that complainant claims himself the owner of the land mentioned in the complaint petition, i.e., Khata Nos.417 and 418 (old) and Khesra Nos.435, 436, 437 (old) and No.736 (new). According to him, he had purchased this land by registered sale deed. It is further alleged that on 23.3.2010, when he came over the land then accused persons told him that they have purchased the land and they also forcibly obtained his signature and LTI on plane stamp paper and alleged to have assaulted on his back with butt of pistol and snatched away a golden chain and some cash. The main allegation is that the accused persons giving into conspiracy created a forged sale deed on 2.1.2010 by purchasing the

land from a person. When he obtained this sale deed, then he filed this complaint. Police commenced the investigation after registering the case and submitted charge sheet, thereafter, the impugned order was passed by the Magistrate.

4. Learned counsel appearing on behalf of the petitioners assails the order of taking cognizance on the ground that it is purely a civil dispute between the parties. Any of the ingredients of the creating forged document is not made out in this case. Petitioner nos.12 and 13, who are title holders of the said land executed the sale deed in favour of petitioner nos.2, 3, 4 and 10 and rest petitioners are family members of vendors and vendees. A civil litigation was also going on simultaneously and it went up to the Bihar Land Tribunal in Case No.676 of 2013 and observed that the disputes relates to the right, title and possession of the parties over the disputed land and so the parties were directed to approach the Civil Court. Pursuant to the said order, Title Suit No.145 of 2015 has already been filed by Navin Kumar Yadav. Learned counsel has also placed reliance reported in **2009(8) SCC 751 (Mohammed Ibrahim and Others Versus State of Bihar and Another)** and submits that the factual matrix and present case is also similar to the aforesaid case wherein the Apex Court decided the issue holding therein that Criminal Court should ensure that criminal proceeding are not mis-used for settling score.

5. Mr. Yogesh Chandra Verma, learned Senior Counsel appearing on behalf of the opposite party no.2 submits that there is no illegality in the impugned order rightly the cognizance has been taken because a person who is not owner of the concerned land executed sale deed to some other so the opposite party no.2 was put in loss and a forged document was created.

6. Having considered the submissions of learned counsel for both sides and on perusal of the record, I find that there exists a civil dispute between both sides. The principle allegation levelled against the complainant is that the land belonging to the complainant purchased by a registered sale deed was sold by some other person to some of the accused persons. Now the only question to be determined in this case whether a forged document in view of Section 464 of I.P.C. has been created or not as per the allegation itself. Making of a false document to defined in Section 464 of I.P.C. which reads as such :-

> " **464. Making a false document.-** [A person is said to make a false document or false electronic record –
>
> First – Who dishonestly or fraudulently –
>
> (a) makes, signs, seals or executes a document or part of a document;
>
> (b) makes or transmits any electronic record or part of any electronic

record;

(c) affixes any [electronic signature] on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the [electronic signature],

with the intention of causing it to be believed that such document or part of document, electronic record or [electronic signature] was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly – Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with [electronic signature] either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly – Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his [electronic signature] on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he

> does not know the contents of the document or electronic record or the nature of the alteration.]"

7. In view of Section 467 of I.P.C., whoever forges a document which purports to valuable security shall be punished with imprisonment of life or that imprisonment of other description for a term which may extend to 10 years and shall also be liable to fine and Section 471 of Cr.P.C. says that whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document shall be punished in the same manner as if he had forged such document.

8. The Apex Court in the case of **Mohammed Ibrahim and Others (Supra)** has elaborately discussed the aforesaid Sections, which is as follows :

> " 13. The condition precedent for an offence under Sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong

to him), can be said to have made and executed false documents, in collusion with the other accused.

14. An analysis of Section 464 of the Penal Code shows that it divides false documents into three categories :

1. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

2. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

3. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

In short, a person is said to have made a "false document", if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practising deception, or from a person not in control of his senses.

15. The sale deeds executed by the first appellant, clearly and obviously do not fall under the second and third categories of "false documents". It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of the complainant's land (and that Accused 2 to 5 as the purchaser, witness, scribe and stamp vendor, colluded with the first accused in execution and registration of the said sale deeds) would bring the case under the first category.

16. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of "false documents", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted."

9. In the present case, it is not a case that the accused persons impersonated the complainant while executing the sale deed or any alteration was made either in already executed document, or executed the sale deed by practicing some deception. Petitioner nos.12 and 13 claiming themselves as owner of the land in question have executed the sale deed in favour of petitioner nos.2, 3, 4 and 10. Rest others are the family members of the vendors and vendees. In the present case, the complaint is not filed by the purchaser, if a person sells any piece of land having no right and title, then the Vendee gets

cheated but this is not the case here therefore the facts stated in the present complaint even if taken in entirety do not constitute prima facie case under offences in which cognizance has been taken.

10. In view of the aforesaid discussion, I come to the conclusion that it is essentially a civil dispute and so the criminal proceeding in the court below is quashed.

11. In the result, this quashing petition is allowed.

(Arun Kumar, J)

N.H./-

AFR/NAFR	NAFR
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