**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.15937 of 2012**

Arising Out of PS.Case No. -281 Year- 2009 Thana -Barbigha District- SEKHPURA

---

1. Md. Samad Hussain S/O Late Md. Ahmad Hussain Resident Of Village- Sarwa, P.S.- Barbigha, Dist.- Sheikhpura
2. Most Roshan Khatoon W/O Late Md. Ahmad Hussain Resident Of Village- Sarwa, P.S.- Barbigha, Dist.- Sheikhpura
3. Nuresha Khatoon W/O Md. Nasim Uddin, D/O Ahmand Hussain Resident Of Village- Sarwa, P.S.- Barbigha, Dist.- Sheikhpura
4. Md. Nasim Uddin S/O Late Sasuddin Resident Of Village- Sarwa, P.S.- Barbigha, Dist.- Sheikhpura
5. Surendra Prasad Yadav S/O Daro Yadav Resident Of Village- Sarwa, P.S.- Barbigha, Dist.- Sheikhpura

.... .... Petitioners

Versus

1. The State Of Bihar
2. Md. Asif Hussain S/O Md. Ashique Hussain Resident Of Village- Sarwa, P.S.- Barbigha, Dist.- Sheikhpura

.... .... Opposite Parties.

---

**Appearance :**

For the Petitioner/s : Mr. Vikram Deo Singh, Advocate<br>
Mr. Pankaj Kumar, Advocate<br>
For the State : Mr. Jharkhandi Upadhyay, APP<br>
For Opposite Party Nos. 2 to 4: Mr. Chaubey Jawahar, Advocate<br>
Mr. Shafiur Rahman, Advocate

---

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

ORAL JUDGMENT

**Date: 30-11-2017**

This application under Section 482 of the Code of Criminal Procedure has been filed by the petitioners for quashing the order dated 24.02.2012 passed by the learned Chief Judicial

Magistrate, Sheikhpura in Barbigha P. S. Case No. 281 of 2009 by which the petitioners have been summoned to face trial for the offences punishable under Sections 467, 468 and 471 read with 34 of the Indian Penal Code (for short 'IPC').

2. Mr. Vikramdeo Singh, learned counsel for the petitioners submitted that even on admitted facts of the case, none of the ingredients of the offences alleged, would be attracted against the petitioners. He submitted that the petitioners no. 1 to 3 are the proprietors and title holders of the plot in question and petitioner no. 4 is attesting witness whereas petitioner no. 5 is a mere identifier of the sale deed dated 16.11.2009. The informant had or has no title over the land in question. He submitted that the vendee Shamsher Bahadur Singh, who parted with money has also been made accused.

3. Mr. Vikramdeo Singh further submitted that ingredients of forgery are completely missing in the case, as there is no allegation that on deception the complainant parted with any money. Lastly, he contended that the informant has instituted a title suit, vide T.S. No. 25/2010, for declaring sale deed illegal and void. According to him, the dispute is purely of civil nature and no offence, as alleged, is made out.

4. On the other hand, learned counsel appearing for the informant submitted that there is no error in summoning the

petitioners for trial for the offences under which cognizance has been taken. He submitted that it would be manifest from the first information report that the petitioners no. 1 to 3 having no right, title and possession over the agricultural land bearing plot No. 170, khesara No. 852 admeasuring 20.50 decimals situated in village-Sarwa, P.S. Barbigha, District-Sheikhpura belonging to the informant sold the same fraudulently by executing registered sale deed in favour of Shamser Bahadur Singh. He submitted that the allegations made in the first information report were duly investigated upon and the police also found the same to be true and filed charge-sheet against the petitioners and, thus, the learned Chief Judicial Magistrate committed no error in taking cognizance of the offences and summoning the petitioners.

5. I have heard learned counsel for the parties and carefully perused the record.

6. In sum and substance, the case of the informant is that his agricultural land pertaining to plot no. 170, khesara no. 852 admeasuring 20.5 decimals was sold to one Shamsher Bahadur Singh by executing registered sale deed on 16.11.2009 by the petitioners no. 1 to 3 in spite of the knowledge that it was the informant, who was real owner of the land. When the informant came to know about the alleged fraudulent act of the petitioners, he took certified copy of

the aforesaid sale deed executed on 16.11.2009. Thereafter, on 04.12.2009, when a protest was made by the informant, the petitioners no. 1 to 4 not only abused him but also demanded *rangdari* and threatened him with dire consequences. The informant has alleged that petitioner no. 5 Surendra Prasad Yadav was the person, who had prepared the fraudulent sale deed in question.

7. On completion of the investigation, the police submitted charge-sheet in the case pursuant to which impugned order dated 24.02.2012 was passed by the learned Chief Judicial Magistrate, Sheikhpura summoning the petitioners after taking cognizance of the offences under Sections 467, 468 and 471/34 of the IPC.

8. Section 467 deals with the punishment for the offence of forgery of valuable security or a will, Section 468 prescribes punishment for the offence of forgery for purpose of cheating and Section 471 prescribes punishment for using as genuine a forged document or electronic record.

9. Section 463 of the IPC defines the term ‘forgery’. It reads as under :-

> “**463. Forgery.**— Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to

> cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."

10. It would be manifest from the definition of the term 'forgery' that making of a false document so as to support any claim over title would constitute 'forgery' within the meaning of Section 463 of the IPC.

11. What amounts to making of a false document has been prescribed in Section 464 of the IPC, which reads as under :-

> "**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 [342] [electronic signature] on any electronic record;
>
> (d) makes any mark denoting the execution of a document or the authenticity of the [342] [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.]"

12. The condition precedent for an offence under Sections 467, 468 and 471 of the IPC is forgery. The condition precedent for the offence of forgery is making a false document.

13. In **Mohammed Ibrahim and Others vs. State of Bihar and Another [(2009) 8 SCC 751]**, at para 11, the Supreme Court

describes false documents as under :-

> “11. … 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 practicing deception, or from a person not in control of his senses.”

14. When I look to the allegations made in the first information report, I find that the ingredients of forgery are not attracted as the accused persons are not alleged to have used any forged or false document as required under Sections 463 and 464 of the IPC. There is no allegation of impersonation against the accused persons. They are also not alleged to have altered any document. The informant has also not alleged that the accused persons obtained any document, by deception or intoxication from him or anyone else.

15. The petitioners no. 1 to 3 claim themselves to be the owners of the property in dispute. They have executed a sale deed in favour of one Shamser Bahadur Singh, who has also been made an accused. Petitioner no. 5 is alleged to have prepared the sale deed in question and petitioner no. 4 is said to be an attesting witness to the sale deed. The execution of sale deed has not been denied by the petitioners. If the informant is aggrieved by the assertions made in

the sale deed, he has a remedy under the civil law. However, the vendee may have a case that the accused persons deceived him by making a false or misleading representation or by any other action or omission. He may bring a criminal case by alleging that the accused offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof or to intentionally induce him to do or omit to do anything which he would not do or omit he were not so deceived. The vendee has not filed any case against the petitioners rather the informant has made him an accused by reason of being the purchaser.

16. Thus, the court is of the opinion that no case has been made out for taking cognizance of offences under Sections 467, 468 and 471 of the IPC on the basis of allegations made in the first information report even if given face value and taken to be correct in their entirety.

17. Accordingly, the impugned order dated 24.02.2012 passed by the learned Chief Judicial Magistrate, Sheikhpura in Barbigha P. S. Case No. 281 of 2009, as also the entire proceedings arising out of aforesaid case, are, hereby quashed.

18. The application stands allowed.

19. It is needless to say that the Court has not entered into the merit of the claim, as the title suit is pending, which has been

determined in accordance with law. The informant would be at liberty to make a prayer before the court in seisin of the title suit for an early disposal of the same and, in case such a request is made, the court concerned shall make an endeavour for early disposal of the suit.

**(Ashwani Kumar Singh, J.)**

Kanchan/-

| | |
|---|---|
| AFR/NAFR | NAFR |
| CAV DATE | NA |
| Uploading Date | 05.12.2017 |
| Transmission Date | 05.12.2017 |