

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.5139 of 2012

Arising Out of PS.Case No. -402 Year- 2008 Thana -Farbisganj District- ARRARIA

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1. Rajiv Raman Saha S/O Khagendra Saha R/O Vill & P.O.& P.S.Farbisganj, Distt-Araria
 2. Dilip Kumar Paul S/O Rabindra Nath Pal R/O Vill & P.O.& P.S.Farbisganj, Distt-Araria

.... Petitioner/s

Versus

1. The State Of Bihar
2. Mangi Lal Golchha S/O Late Gobardhan Das Golchha Rounak Trading Agency, At Vill & P.O.& P.S.Farbisganj, Distt-Araria

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. M.N.Parbat, Sr. Advocate Mr. Ashok Kumar Roy, Advocate
For the Opposite Party/s	:	Mr. Siraj Samdarshi, Advocate Mr. Vijay Shankar Tiwari, Advocate
For the State	:	Mr. Chndra Sen Prasad Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 05-09-2017

This application under Section 482 of the Code of Criminal Procedure has been filed to quash the order dated 27.07.2011 passed by the learned Chief Judicial Magistrate, Araria in Farbisganj P.S. Case No. 402 of 2008 (G.R.No. 1945 of 2008) whereby and whereunder the learned Chief Judicial Magistrate differing from the final form submitted by Police, took cognizance under Sections 419, 420, 465, 467, 468, 470, 471 and 120-B/34 of the Indian Penal Code against the petitioners.

2. Heard both sides.



3. The facts in brief is that the Opposite Party No. 2 lodged an F.I.R. alleging inter alia that these petitioners in collusion with other co-accused brought into existence some registered sale deeds in their favour with respect to the land, which was purchased by him from the heirs of recorded tenant. The vendors of the petitioners (accused) had no right to execute any sale deed and so, the petitioners are liable to be prosecuted for the offence in question.

4. The learned counsel for the petitioners submits that from the allegation, no offence as alleged is made out. There is bona fide dispute between the parties. The land of plot nos. 48 and 49 was recorded under Khata No. 90 in the name of Sarvas Lal Thakur and the name of one Ram Pari Devi, who was the daughter of the said recorded tenant, stands mentioned in remark column as *Kabjedar*. The said Ram Pari Devi was in possession of the said land and she executed power of attorney in favour of Sabita Thakur and Rahul Anand. The said two attorneys sold the land in question to the petitioners by virtue of two sale deeds dated 22.07.2006 and 02.02.2007. The petitioners got their names mutated and are paying rent receipts. The petitioners are in possession of the said land. The informant claims the said land by virtue of registered sale deeds alleged to be executed by two sons of recorded tenant. There is absolutely no ingredient of cheating or committing forgery with



respect to any document and so, no offence under aforesaid sections is made out. The learned Magistrate has passed the impugned order in mechanical manner without applying judicial mind and so, the impugned order is fit to be quashed.

5. The learned counsel for the Opposite Party No. 2 as well as the learned APP for the State opposed the submissions.

6. On going through the F.I.R. and annexures enclosed with the application, I find that the petitioners claim their right by virtue of the registered sale deed executed by two attorneys of one Ram Pari Devi. She was the daughter of recorded tenant. From the copy of revisional survey Khatian, it appears that her name is recorded in the remark column. The Opposite Party No. 2, on the other hand, disputes the title of Ram Pari Devi.

7. In this regard, I would like to refer a case reported 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 facts of the present case is similar to the case decided by the Apex Court. The criminal prosecution of these petitioners in the facts and circumstances of the case appears to be an abuse of process of Court.

8. This application is therefore allowed and the order dated 27.07.2011 passed by the learned Chief Judicial Magistrate, Araria in Farbisganj P.S. Case No. 402 of 2008 (G.R.No. 1945 of 2008) is hereby quashed.

(Sanjay Kumar, J)

ajay gupta/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.09.2017
Transmission Date	08.09.2017

