

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.6070 of 2012

=====

Shib Shankar Yadav S/O Late Akleshwar Yadav, of Village Danda Bazar,
P.S.Goradih, Distt-Bhagalpur

.... Petitioner

Versus

1. The State of Bihar
2. Bashishtha Narayan Chaudhary S/O Late Bidyanand Chaudhary of Village
Rampur, P.S. Amarpur, Distt-Banka

.... Opposite Parties

=====

Appearance :

For the Petitioner	:	Mr. Sivesh Chandra Mishra, Advocate
For the Opposite Party No.2	:	Mr. Ajay Mukherjee, Advocate
For the State	:	Mr. Sanjay Kumar Sharma, APP

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 07-09-2017

This application under Section 482 of the Cr.P.C. has been filed to quash the order dated 11.01.2011 passed by Judicial Magistrate, Ist Class, Banka in Complaint Case No.1709 of 2010 whereby and whereunder the learned Magistrate finding prima-facie case for the offence under Section 420 of the IPC ordered for issuance of summons against the petitioner.

2. Heard and perused the record.

3. The Opposite Party No.2 filed a complaint case on the file of CJM, Banka which was sent to police station under Section 156(3) of the Cr.P.C. The matter was investigated and police submitted final report as land dispute. The learned Magistrate finding prima face took cognizance under Section 420 of the IPC. The complaint has alleged



that the land of plot no.256 and 257 having total area of 8 decimal belonged to his family which was recorded in the name of his grand father as tenure holder. The petitioners had no concern with the said land and in order to harass the petitioner, has sold the same to co-accused Manju Devi by virtue of registered sale deed and thereby cheated the complainant and caused him loss to the tune of Rs.3,00000/-.

4. The learned counsel for the petitioner submits that the petitioner is bonafide owner of the land in question and he having right title and possession over the said land has sold the same to the co-accused. The dispute between the parties is purely civil dispute and so no offence under Section 420 of the IPC is made out. The learned Magistrate has passed the impugned order without applying judicial mind and the same is fit to be quashed.

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

6. On perusal of complaint petition, it appears that both parties are claiming title and possession over the said land. The petitioner claims that he had executed sale deed bonafide on the basis of his right and title. The Opposite Party No.2 on the other hand also claims title as his ancestral land.

7. In the case of ***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.”

8. The present case is squarely covered by the principle decided by the Hon’ble Apex Court. In the complaint petition, I do not find any ingredient of cheating or committing forgery in getting the sale deed executed.

9. Therefore in view of principles laid down by the Supreme Court as discussed above, the order dated 11.01.2011 passed in Complaint Case No. 1709 of 2010 and the criminal prosecution of the petitioner is hereby quashed.

10. This application is, accordingly, allowed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	15.09.2017
Transmission Date	15.09.2017

