

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.10510 of 2012

Arising Out of Complaint Case No. 3322-C Year- 2010 Thana –Manpur District- WEST CHAMPARAN (BETTIAH)

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Nurain Akhtar S/o Hassan Imam, R/o Village - Sahnaula Pakadi, P.S. Manpur, District - West Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Sheikh Hassan Imam S/o Late Sheikh Ainul Hassan, resident of village- Sahnaula Pakadi, P.S. Manpur, District - West Champaran.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Umesh Chandra Verma, Advocate
Rashmi Jha, Advocate
For the Opposite Party/s : Mr. Akhileshwar Dayal, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 06-09-2017

1. Heard both sides and perused the record.
2. This criminal miscellaneous application under section 482 of the Code of Criminal Procedure has been filed to quash the order dated 14.10.2011 passed by the learned Judicial Magistrate 1st Class, Bettiah, West Champaran in Complaint Case No. 3322-C of 2010 (Trial No. 1742 of 2012) whereby and whereunder the learned Magistrate finding *prima facie* case for the offences under sections 417 and 465 of the Indian Penal Code, summoned the petitioner to face the trial.
3. The opposite party no. 2 filed a complaint case on the file of learned Chief Judicial Magistrate, Bettiah, West Champaran



alleging therein that on 11.10.2010 he went to Narkatiaganj Registration Office for executing gift deed in favour of the accused persons with respect to land measuring about 10 kathas of plot nos. 1434, 1435 and 1436 of village Rakhayee. The accused persons in collusion with Deed Writer and Identifier committed fraud and forgery and fraudulently got a sale deed executed with respect to plot no. 1465 and thereby cheated the complainant for wrongful gain. The complainant and his witnesses during enquiry, supported the allegation and the learned Magistrate finding *prima facie* case, took cognizance and summoned the petitioner.

4. The learned counsel for the petitioner submits that the petitioner is son of complainant. The father of this petitioner is prudent and literate person, who voluntarily executed the sale deed in his favour after going through the contents thereof. The opposite party no. 2 executed the document in his own pen. The opposite party no. 2 has filed a Title Suit No. 300 of 2010 in the court of learned Sub-Judge, Bettiah for declaring the said sale deed as forged and fabricated document. From the allegation, no offence under sections 417 and 465 of the Indian Penal Code, is made out. The learned Magistrate without applying judicial mind, has taken cognizance and so, the impugned order is not sustainable and is fit to be quashed.

5. On the other hand, the learned counsel for the opposite



party no. 2 as well as learned Additional Public Prosecutor opposed the submission.

6. On perusal of complaint petition, I find that the opposite party no. 2 is father of this petitioner. The sale deed in question was executed by the opposite party no. 2 in favour of this petitioner. The other co-accuseds are Deed Writer and Identifier. The allegation of committing fraud and forgery appears omnibus. The opposite party no. 2 has already filed a title suit for cancellation of the sale deed in question. The dispute between the parties is purely a civil dispute.

7. 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.”



8. The present case is squarely covered by the principle decided by the Hon'ble Apex Court. The allegation of undue pressure and committing fraud can be established only after trial of civil suit. In the complaint petition, I do not find any ingredient of offence under sections 417 and 465 of the Indian Penal Code. In such circumstance, the criminal prosecution of this petitioner appears to be an abuse of process of Court.

9. 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 order dated 14.10.2011 passed by the learned Judicial Magistrate 1st Class, Bettiah, West Champaran in Complaint Case No. 3322-C of 2010 (Trial No. 1742 of 2012) as well as the criminal prosecution of this petitioner on the basis of said order, is hereby quashed.

(Sanjay Kumar, J)

Mahesh/-

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

