

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No. 837 of 2016

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

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Sumitra Yadav, Wife of Dr. Ramashray Yadav, Resident of 01, Shivpuri, Post Office + Police Station - Shastri Nagar, District - Patna

.... Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Registration Department, Government of Bihar, Patna.
2. The Inspector General of Registration, Government of Bihar, Patna.
3. The Registrar District Registry Office, Patna.
4. Rakesh Kumar, Son of Shyam Narayan Sinha, Managing Director of Khayati Construction Private Limited, Resident of 120, Anandpuri, Boring Canal Road, Police Station - S.K. Puri, District - Patna.
5. Pramod Kumar Singh, Son of Mahatma Singh and Smt. Pritee Kumari, Wife of Sri Pramod Kumar Singh, Both resident of Village - Kaithwalia, Post Office - Sankhe Khas, Police Station - Uchkagaon, District - Gopalganj, At present residing at Flat No. 505, Shyam Residency, Saguna Mangalam Vihar, Police Station - Danapur, District - Patna.
6. Mrs. Preeti Kumar, Wife of Sri Harsh Vardhan Vinayak, R/o Road No. 8, Anand Niketan Co-operative, Rajiv Nagar, Police Station - Rajeev Nagar, District - Patna-24.
7. Smt. Renu Sharan, Wife of Sri Digvijay Sharan, Resident of A/12, Anandpuri, West Boring Canal Road, Police Station - S.K. Puri, District - Patna.
8. Sri Rajeev Kumar Choudhary, Son of Rama Kant Choudhary and Smt. Suman Choudhary, Wife of Sri Rajeev Kumar Choudhary, Both are resident of C/o Subodh Kumar, 302A, Shanti Planco Awas, Boring Patliputra Road, P.S. - Patliputra, District - Patna.
9. Dr. Sunil Kumar Sahu, Son of Ram Bilas Prasad Sahu, Resident of Mahatma Gandhi Marg, near LIC Office, Post Office + Police Station - Khagariya, District - Khagariya.
10. Pankaj Kumar, Son of Late Suresh Prasad Singh, Resident of D/47, Peoples Co-Operative Colony, Post Office - Lohia Nagar, Police Station - Kankarbagh, District - Patna.
11. Dr. Arjun Sah, Son of Late Shukdeo Sah, Resident of Mahatma Gandhi Marg near East LIC Office, Post Office + Police Station - Khagariya, District -



Khagariya.

12. Smt. Meena Devi, Wife of Sri Jay Prakash Singh, Resident of Rukunpura, Bailey Road, Opposite Ramgarh House, Post Office - B.V. College, Police Station - Rupaspur, District - Patna.
13. Mrs. Priyanka Kumari, Wife of Sri Ranjeet Kumar, Resident of Kali Sthan, Betiah Bazar, Post Office - Danapur Cant, P.S. - Danapur, District - Patna.
14. Sri Ranjay Kumar Tiwari, Son of Ramadhar Tiwari, Resident of Kashmeri Hatta, Mauna, Gola Road, Chapra, P.S. - Chapra Town, District - Saran.

.... Respondents

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Appearance :

For the Petitioner	: Mr. Sunil Singh, Advocate
For the Res. No. 4	: Mr. Ajay Kumar Thakur, Advocate Mr. Awadhesh Kumar, Advocate
For the Res. No. 6	: Mr. Rajeev Shekhar Abhanjali, Advocate
For the Res. Nos. 5, 9, 10, 11, 13 & 14	: Mr. Prashant Sinha, Advocate
For the Res. No. 12	: Mr. Prabhakar Singh, Advocate
For the State	: Mrs. Binita Singh, SC-28 Mr. Nishant Kumar Jha, A.C. to S.C.-28

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 23-11-2017

Heard learned counsel for the parties.

2. This writ application has been filed for quashing/setting aside letter no. 1319, dated 26.07.2016 issued by respondent no. 3/the District Registration Officer vide Annexure-1 whereby and whereunder the District Registration Officer has refused to initiate a criminal complaint/formal investigation and prosecution against respondent no. 4 as envisaged under Section 83 of the Indian Registration Act for the crime allegedly committed under Section 82 of the Registration Act, 1908 and has recorded that the petitioner is competent to pursue such complaint before the competent court.



3. The petitioner is a land owner. She had entered into a development agreement with respondent no. 4, namely, Khayati Construction Private Limited. The building was not complete. In the meantime, respondent no. 4 sold flats of the share of the petitioner to different persons through different registered sale deeds making false declaration before the Registrar that the respondent no. 4 is entitled under Section 5 of the Bihar Apartment Ownership Act, 2006 to sell the said flat. Though the same was assigned in the share of the land owner/petitioner by the written agreement vide Annexures 4, 4/A, 5 and 6.

4. The petitioner filed applications vide Annexure-2 series, for initiation of a criminal contempt against respondent no. 4 for alleged false declaration made by him while executing different registered sale deeds in favour of different persons, just to cause wrongful loss to the petitioner. The District Sub-Registrar communicated the impugned letter stating therein that after taking necessary guidelines from the department, he is of the view that the petitioner is competent to lodge a criminal complaint before a competent court.

5. Section 83 of the Registration Act, 1908 reads as follows:-

*“83. Registering officer may commence prosecutions.— (1) A prosecution for any offence under this Act coming to the knowledge of a registering officer in his official capacity may be commenced by or with the permission of the Inspector General, [***] the Registrar or the Sub-Registrar, in whose territories, district or sub-district, as the case may be, the offence has been committed.*



(2) Offences punishable under this Act shall be triable by any Court or officer exercising powers not less than those of a Magistrate of the second class.”

6. A bare perusal of the aforesaid provision would make it clear that with the permission of the concerned authorities criminal prosecution can be launched by the private person also. Similar question was considered by the Hon’ble Apex Court in **Dharmadeo Rai Versus Ramnagina Rai** reported in 1972 PLJR. 502. Para 4 and 5 of the aforesaid judgment are being reproduced below:-

“4. On a reading of the section, it would be clear that it deals only with prosecution for an offence under the Act coming to the knowledge of the Registering Officer in his official capacity. It, in effect, provides that where an offence comes to the knowledge of the Registering Officer in his official capacity, a prosecution may be commenced by or with the permission of any of the officers mentioned in the section. The section can possibly have no application to cases in which offences are committed under the Act, but the offences do not come to the knowledge of the Registering Officer in his official capacity. If the Registering Officer does not know in his official capacity that the document produced before him is a false document or that the person appearing before him is personating some other person, the section has no application. The section is not prohibitory in that it does not preclude a private person from commencing a prosecution. Even in a case where the commission of an offence comes to the knowledge of the Registering Officer in his official capacity, the section does not prohibit a private person from commencing a prosecution as the section is clearly permissive in its language and intent. In other words, the section is an



enabling one. It enables the persons mentioned therein to commence a prosecution in cases where the commission of the offence under the Act comes to the knowledge of the Registering Officer in his official capacity. The section enables the officers named to use their official position for the purpose of prosecution without personal risk.

5. In (1) *Gopinath V. Kuldip Singh and others*, the question whether the section prohibits a private person from commencing a prosecution without the permission as provided in the section, came up for consideration and a Full Bench of the Calcutta High Court answered the question by saying that the section is not prohibitory in character and that it does not preclude a private person from commencing a prosecution for an offence under the Act without the permission as envisaged in the section. This case has been followed by the Madras High Court in (2) *Re Piranu Nadathi and Others*. There also the Court has taken the view that the section is an enabling one in that it only authorises the authorities mentioned therein to commence a prosecution, and does not prohibit a private person from commencing a prosecution without the permission as required by the section. In (3) *Emperor V. Yesa Nana Didwagh and Others*, Beaumont, C. J., speaking for the Court, said that the section is intended to provide only for cases where the knowledge of an offence under the Act comes to a Registering Officer in his official capacity and that it has no application when he has no such knowledge, and that even in cases where he has knowledge of the commission of the offence in his official capacity, the section is only enabling and does not preclude a private person from launching a prosecution for the offence. The same view was taken by a Bench of the Patna High Court in (4) *Ganga Dibya and Another V. Emperor*, and also by the High Court of Jammu and Kashmir in (5) *Habib Shah V. Mehda Shah*. In (6) *Nga Pan Gaing and Others V. King*



Emperor the Rangoon High Court held that the word 'may' in Section 83 of the Act should be read as equivalent to 'must be' and that a prosecution for an offence under the Act coming to the knowledge of a Registering Officer in his official capacity cannot be commenced by a private person without the permission mentioned in the section. A Full Bench of the Allahabad High Court, in (7) Emperor V. Mohd. Mehdi and Others, took the view that Section 83 lays down a special procedure for prosecution of the offences created by the Act and, therefore, that procedure should be followed, that although the word 'may' occurring in the section cannot be read as 'must', it has to be read in the context as having a mandatory character. The Court said that the offences contemplated by Sections 81 and 82 of the Act are offences committed against registering authority, that only indirectly that private persons would be affected and, therefore, the provisions of the section are prohibitory in character. In our view, this reading of the section is inadmissible for the obvious reason that the section, as we have said, provides only for one type of cases, namely, cases in which the commission of an offence under the Act comes to the knowledge of the Registering Officer in his official capacity and even there, the language of the section is permissive and not mandatory. Section 81 of the Act makes the endorsing, copying, translating or registering of a document by a Registering Officer charged with those duties in a manner which he knows or believes to be incorrect, intending thereby to cause injury as defined in the Penal Code to any person, an offence punishable with imprisonment which may extend to seven years or with fine or with both. Section 82 deals with four classes of offences classified under Clauses (a), (b), (c) and (d) of the section. Clause (a) deals with intentionally making false statements before officers acting under the Act, Clause (b) with intentionally delivering to a Registering Officer a false



copy of a map or plan; and (c) with false personation and presentation of a document or the making of an admission of a statement in the assumed character in any proceeding or enquiry under the Act. Clause (d) deals with the abetment of the above offences.”

7. On perusal of the provisions of law aforesaid as well as the judgment of the Supreme Court, I am of the considered view that the impugned letter at Annexure-1 suffers from no infirmity because the petitioner is competent to lodge a criminal complaint for the alleged criminal act, allegedly, committed by the respondent no. 4. Hence, this Court is not inclined to entertain this application.

8. Accordingly, it stands dismissed as devoid of any merit.

(Birendra Kumar, J)

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AFR/NAFR	A.F.R.
CAV DATE	N.A.
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