

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.35532 of 2013

Arising Out of PS.Case No. -232 Year- 2008 Thana -AURANGABAD
COMPLAINT CASE District- AURANGABAD

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1. Bijay Singh S/O Late Deo Raj Singh Resident Of Village- Chechdhi, P.S.-
Obra, District- Aurangabad

.... Petitioner/s

Versus

1. The State Of Bihar
2. Krishna Yadav @ Mauli Yadav Village- Kathura, P.S.- Aurangabad (M),
Distt.- Aurangabad.
3. Gulmala Jain W/O Mahesh Jain Resident Of Village/ Mohalla- New Area
Aurangabad, P.S. And Distt.- Aurangabad
4. Mahesh Jain S/O Yamuna Jain Resident Of Village/ Mohalla- New Area
Aurangabad, P.S. And Distt.- Aurangabad
5. Bimla Jain W/O Yamuna Jain Resident Of Village/ Mohalla- New Area
Aurangabad, P.S. And Distt.- Aurangabad
6. Ram Bachan Singh S/O Late Bajrangi Singh Resident Of Village- Ketaki,
P.S.- Deo, Distt.- Aurangabad
7. Krishna Ram Halka Karmchari, Anchal Aurangabad, P.S. And Distt.-
Aurangabad
8. Bishwanath Prasad Gupta S/O Namalum Anchal, P.S. And District-
Aurangabad

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bindeshwar Prasad Singh

For the Opposite Party/s : Mr. Mayanand Jha (App)

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

4 17-01-2017

The petitioner has filed this application under Section 482
of the Code of Criminal Procedure for quashing order dated
18.02.2012 passed in Complaint Case No.232 of 2008/Tr. No.187
of 2008 by the C.J.M., Aurangabad under Section 417 and 120B of
the Indian Penal Code, by which he has found prima facie case



under Section 417 and 120B of the Indian Penal Code and ordered for issuance of processes against the petitioner.

The prosecution story in short is that Opposite Party No.2 filed a complaint petition before the Chief Judicial Magistrate, Aurangabad on 5.8.2008, stating therein *inter alia* that he has purchased 4 13/24 decimal of land of Khata No.21 Plot No.995 after leaving 10 feet road in village Khatharus, district Aurangabad from accused no.4 by a registered sale-deed and thereafter, he got the same mutated in his name and now he is in possession over the same. It is also a case of the complainant – O.P. No.2 that on the date of occurrence, when he went to see his land, he met with accused no.5 and he stated that he has purchased 2 ¾ decimal land from accused nos. 2 and 4 on 30.7.2001 and as per advice of accused nos.1 & 3, he has got his name mutated, as such out of his land, he has also purchased 2 ¼ decimal land, for which demand no.45 of 2010 has been created. It is also his case that thereafter, he talked to Halka Karmchari, who informed that accused no.2 had demand no.53 of 2010, however, no area is mentioned over the demand no.53 of 2010, it is recorded in the name of Bigan Ram son of Rajeshwr Ram Village- Katharua, District-Aurangabad and that demand belongs



to Khata No.26. It is also his case that the aforesaid demand was created in Khata no.26 by removing one decimal of land and they have got the same mutated in favour of accused no.5 by committing a forgery. It is also his case that demand no.152/1 is not entered in the name of Bimla Devi, in spite of it, by committing forgery, the accused person has created a demand and making false claim over 2 ¼ decimal of his land, due to which he has suffered loss of Rs.50,000/-.

The learned court below after examining the complainant as well as after enquiry under Section 202 of the Code of Criminal Procedure, finding *prima facie* case under Section 417 and 120B of the Indian Penal Code ordered for issuance of processes, vide order dated 18.02.2012 passed in Complaint Case No.232 of 2008/Tr. No.187 of 2008. The aforesaid order is under challenge in this Hon'ble Court.

It is submitted on behalf of the complainant-petitioner that the complaint case itself shows that accused persons in collusion with Halka Karmchari has created forged document causing financial loss to him and on the basis of materials available in the complaint petition and during the course of



enquiry, a case under Section 420 of the Indian Penal Code is also made out but the learned C.J.M., Aurangabad without appreciating the fact has taken cognizance only under Section 417 and 120 (B) of the Indian Penal Code, hence, the aforesaid order is not sustainable in the eye of law.

Heard learned A.P.P. also, who has submitted that there is nothing illegal in the impugned order, as even during trial, if the materials shows that a case under Section 420 of the Indian Penal Code is made out, it is open to the petitioner to make prayer before the court below for proceeding the accused persons under Section 420 of the Indian Penal also.

Having heard both sides and from perusal of the record, it appears that the petitioner has filed this application due to the fact that no cognizance has been taken under Section 420 of the Indian Penal Court though the learned Chief Judicial Magistrate, Aurangabad has taken cognizance under Sections 417 and 120 (B) of the Indian Penal Code.

Section 259 of the Cr.P.C. provides as follows :

"Power of Court to convert summons-cases into warrant- cases.- When in the course of the trial of a summons-case relating to an offence punishable with imprisonment for a term exceeding six months, it appears to the Magistrate that in the interests of justice, the offence should be tried in accordance with the procedure for the trial of warrant-cases, such Magistrate may proceed to re-hear the case in the manner provided by this Code for the trial of



warrant-cases and may recall any witnesses who may have been examined.”

AS such Section 259 of the Code of Criminal Procedure also provides that when evidences will come showing a case under Section 420 of the Indian Penal Code, the learned Chief Judicial Magistrate will proceed with warrant of a case and the petitioner may make prayer before the court below for the same. Otherwise also in course of evidence, if the material comes before the court below to show that evidences are available for offence under Section 420 of the Indian Penal Code against the accused persons, the court below is free to proceed against the Opposite Party No.2 for the offence under Section 420 of the Indian Penal Code.

As such at present, I am not inclined to interfere with this application.

With the aforesaid observation, this application is disposed of.

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(Vinod Kumar Sinha, J)

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