

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.26265 of 2011

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Dhruv Chand Lal son of Late Mathura Lal, R/o village- Jamuwan,, P.S.-Kashichak,
Distt.-Nawadah, At Present Resident Of Indiranagar, Bank Colony, Road No.2,
Infront Of Kamla Market, Ps-Jakkanpur, Distt.Patna..... Petitioner

Versus

1. The State Of Bihar
2. Ramanand Pandit son of Musahari Pandit, R/o village- Jamuawan, P.S.-
Kashichak, Distt.-Nawadah.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Achintya Kumar, Advocate

For the Opposite Party/s : Mr. R.R. Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL JUDGMENT

Date: 16-05-2017

This Criminal Miscellaneous application has been filed for quashing the order dated 19.05.2008 passed by learned Judicial Magistrate Ist Class, Nawada in Complaint Case No. 319 of 2001 / Trial No. 117 of 2008 whereby and whereunder after finding prima facie case to be made out under Section 465 of the Indian Penal Code against the petitioner summon was ordered to be issued.

2. Heard learned counsel for the petitioner, learned APP for the State and learned counsel representing O. P. No. 2.

3. The complainant O. P. No. 2 filed Complaint Case No. 319 of 2001 in the court of Chief Judicial Magistrate, Nawada alleging inter alia therein that the petitioner sold 11 decimals of land of complainant through registered sale deed bearing No. 4315 of 2001 to Saro Devi by committing forgery with a view to grab the land of complainant. It is further alleged that Kailash Singh and others



assisted in committing forgery. The said complaint petition was transferred to the court of Sri B. K. Pandey, Judicial Magistrate Ist Class, Nawada under Section 192 (2) Cr.P.C. where the complainant was examined on solemn affirmation and altogether three inquiry witnesses were examined. Learned Magistrate after considering the materials collected during inquiry dismissed the complaint petition vide order dated 24.07.2001 holding that no prima facie case is made out and the case is of purely of civil nature. The said order was challenged in Cr. Rev. No. 86 of 2001 / 15 of 2003 and that revision was allowed vide order dated 29.08.2003 and the order dated 24.07.2001 was set aside. The matter was remitted back to the trial court with a direction to pass a fresh order regarding issuance of summons under Section 204 Cr.P.C. Thereafter, learned Magistrate passed the order dated 01.12.2003 holding that prima facie offence is made out under Sections 420, 465 and 461 of the Indian Penal Code and against that order the petitioner and others filed Cr. Rev. No. 26 of 2004 / 02 of 2004 where vide order dated 22.04.2004 the order passed by the learned Magistrate was set aside and the learned court below was directed to pass a fresh order as to whether there is sufficient material for issuance of summons against the accused persons under Section 204 Cr.P.C. or not. In the light of order and direction passed in the aforesaid criminal revision, the learned



Magistrate passed the impugned order whereby he took cognizance under Section 465 of the Indian Penal Code against the petitioner only holding that no offence is made out against other accused persons.

4. Submission on behalf of the petitioner is that the complainant has already filed a Title Suit No. 219 of 1991 in the court of learned Munsif, Nawadah regarding the disputed land and to put pressure on the petitioner this case has been filed. No criminal offence is made out against the petitioner rather it is purely a dispute of civil nature for which Title Suit is going on between the parties and allowing to continue such proceeding the same will be an abuse of the process of the court and hence, the order taking cognizance against the petitioner is fit to be quashed.

5. Learned APP and learned counsel representing opposite party no. 2, on the other hand, submit that the learned Magistrate has passed the order rightly as against the petitioner offence punishable under Section 465 of the Indian Penal Code is clearly made out.

6. Having considered the submissions urged at the Bar, going through the complaint petition and the impugned order, it is manifest that the learned Magistrate after considering the complaint petition, the statement of the complainant on solemn affirmation and



statement of three inquiry witnesses namely, Ashok Sharma, Ram Ravidas and Janardan Singh has passed the impugned order which appears quite correct, legal and proper. At this stage, the defence of the accused cannot be looked into whether for the same disputed land Title Suit is going on or not, rather that will be considered at the time of hearing on the point of charge and not at this stage. At this stage, the court is required only to see as to whether on the basis of materials collected during inquiry prima facie offence is made out or not against the accused. The learned Magistrate after considering all these materials collected during inquiry has passed the impugned order which appears quite correct, proper and legal, there is no need of interference of this Court.

7. In the result, impugned order is hereby confirmed and finding no merit in this criminal miscellaneous application, the same is hereby dismissed.

8. However, the petitioner may be at liberty to raise all these points at the time of hearing on the point of charge.

(Jitendra Mohan Sharma, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	18.5.2017
Transmission Date	18.5.2017

