

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No 29549 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- KATIHAR

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Dhirendra Sah @ Dhirendra Prasad Sah S/O Late Nagarjun Sah R/O Dena, P.S.-
Azamnagar, Distt.- Katihar

.... Petitioner

Versus

1. The State of Bihar
2. Shiv Nath Sah @ Bishawnath Sah S/O Late Rasu Sah @ Ramu Sah, R/O Vill.-
Dena, P.S.- Azamnagar, Distt.- Katihar

.... Opposite Parties

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Appearance :

For the Petitioner	:	Mr. Md Musowir, Advocate
For Opposite Party No 2	:	Mr. Mukesh Kumar Jha, Advocate
For the State	:	Mr. J.K. Singh, APP

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CORAM: HONOURABLE MR JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 20-04-2017

Heard learned counsel for the petitioner, learned counsel
for the opposite party no. 2 and learned APP for the State.

2. The present petition has been filed for quashing the
order dated 17.03.2011 passed by the learned Judicial Magistrate, 1st
Class, Katihar by which cognizance has been taken against the
petitioner in Complaint Case No 1260 of 2010 for the offences
punishable under Sections 420 and 465 of Indian Penal Code.

3. The prosecution story, in short, is that out of 5½
decimals of land belonging to Opposite Party No. 2, 1½ decimals of
land was sold to one Wakil Sah on 27.09.2002. When Wakil Sah went
for mutation of his land, he came to know that the said land had



already been sold on 29.08.1979 in favour of the petitioner and informed Opposite Party No. 2 in this regard. On making enquiries, opposite Party No. 2 came to know that the petitioner had fraudulently got a sale deed registered on 29.08.1979 in his own favour by presenting himself in place of Opposite Party No. 2. It was alleged that the petitioner, thereafter, also obtained mutation in his name.

4. Learned counsel for the petitioner submits that the present complaint has been filed maliciously by Opposite Party No. 2 as late as on 11.05.2010 after an inordinate delay as the petitioner had already purchased the land from Opposite Party No 2 in the year 1979. He further relies on the report of the Circle Officer according to which, upon measurement, it was found that the pucca house of the petitioner was standing on the land in question and that the aforesaid Wakil Sah was creating unjustified dispute.

5. Learned counsel for Opposite Party No. 2, on the other hand, opposes the petition submitting that the petitioner has fraudulently obtained a sale deed in the year 1979 which fact came to his knowledge much later when Wakil Sah went for mutation with regard to 1 ½ decimals of land sold to him by Opposite Party No. 2. There is clear allegation of fraudulent act committed by the petitioner in the complaint, for which the petitioner must stand trial.

6. Having heard the parties and consideration of materials on record, this Court is not inclined to interfere in the matter.



It is well settled that inherent power under Section 482 of the Criminal Procedure Code must be exercised sparingly and the parameters for such exercise are well known. The instant case is not one where, on a bare perusal of the allegations made in the complaint, no offence against the petitioner is made out. Moreover, the mainplank of the petitioner's submission is based on the report of the Circle Officer, reliability of which, however, is questioned by Opposite Party No. 2 and remains to be established. This Court is of the view that the dispute between the parties involves disputed questions of fact which would be decided on the basis of the evidence to be led by the parties before the trial Court. This Court is not inclined to interfere in the matter.

7. The petition accordingly stands dismissed. Registry to return the lower Court records forthwith.

(Vikash Jain, J)

M.E.H./Chandran

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