

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.46181 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District- BHABHUA
(KAIMUR)

- =====
1. Premchand Singh S/O Sri Baikunth Singh Resident Of Village-
Karigaon, P.O.- Bhatti, P.S.- Mohania, District- Kaimur At Bhabua
 2. Ram Pravesh Singh S/O Sri Sheo Bachan Singh Resident Of Village-
Karigaon, P.O.- Bhatti, P.S.- Mohania, District- Kaimur At Bhabua
 3. Baikunth Singh S/O Late Gopichand Singh Resident Of Village-
Karigaon, P.O.- Bhatti, P.S.- Mohania, District- Kaimur At Bhabua

.... Petitioners

Versus

1. The State Of Bihar
2. Birendra Singh S/O Sri Suryabansh Singh Resident Of Village-
Karigaon, P.O.- Bhatti, P.S.- Mohania, District- Kaimur At Bhabua

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Abhay Kumar, Advocate
Mr. R.C. Singh, Advocate
For the Opposite Party: Mr. Mayanan Jha, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
C.A.V. JUDGMENT

Date: 19-07-2017

Heard learned counsel for the petitioners
and learned Additional Public Prosecutor for the State.
No one appears on behalf of the opposite party no. 2
despite service of notice.

2. The petitioners, in the present case, are
seeking quashing of the order taking cognizance and
issuance of summon dated 27.08.2013, passed in
Complaint Case No. 435/2013, Tr. No. 2499/2013 by
learned Judicial Magistrate, 1st Class, Bhabhua. The



petitioners prays for quashing of the entire criminal proceeding in the facts and circumstances of the case.

3. Learned counsel for the petitioners has placed the statement made in the complaint petition giving rise to Complaint Case No. 435/2013 in the court of learned Chief Judicial Magistrate, Bhabhua. In the Complaint Petition, the complainant, Birendra Singh has alleged that the accused no. 1 & 3 came to him in January 2013 and requested him and his father to exchange a piece of land bearing Plot No. 348/481 in Chak Khata No. 47 measuring area 9½ decimals in lieu of Plot No. 345 under Khata No. 138 measuring area 3 decimals which is the ancestral land of the complainant. The complainant and his father believed the words of the accused and thinking that they will be getting land which are three times to the land which they are giving to the accused no. 3 by way of exchange, and therefore, a deed of exchange.

4. It is alleged that on 3rd February, 2013 when complainant and accused no. 3 went to registry office to seek advice of the deed writer, they were advised to execute sale deeds in place of deed of exchange. Both the parties agreed to the said advise and on 05.02.2013, the sale deeds were prepared by the deed



writer. The land bearing Plot No. 345 in Khata No. 138 measuring area 3 decimals was transferred by way of sale in favour of accused no. 3 by father of the complainant and in the sale deed prepared in favour of father of the complainant, the vendor was Baikunth Singh, one Ram Pravesh Singh was the identifier of the executants on the sale deeds. It is alleged that father of the complainant admitted its execution in presence of Registrar believing the words of the accused persons that the sale deeds have been rightly written.

It is alleged that after obtaining the original sale deeds from the registry office when the complainant approached Halka Karmachari for mutation of his name in Register-II for purpose of payment of rent, the complainant was told that plot no. 349/482 was wrongly written in the sale deed and the said land does not belong to Baikunth Singh (accused no. 1). The complainant alleged that he came to the house of accused no. 2 & 3 and showed the sale deed which did not contain the correct plot number. The accused persons had wrongly got incorrect plot number entered



in the sale deed. It is alleged that accused persons when told about this, they assaulted the complainant with fists. The complainant, therefore, alleged that they have entered into a conspiracy and committed the offence.

5. Learned counsel for the petitioner submitted that, in the entire complaint petition, the allegation is with regard to recording of an incorrect plot number which was nothing but a typographical error committed by the deed writer. There is no complaint regarding the boundary of the land and the complainant has not alleged that he had not been given possession of the land which was actually the subject matter of understanding between the parties.

6. Learned counsel further submits that both the parties are co-villagers and next door neighbours and there was no reason for the complainant to indulge in this filing of the complaint case as the petitioners were always ready and willing to put their signature on a correction deed. In paragraph 15 of the present application, the petitioners have made the following statements which reads as under: -

15. That the petitioners humbly submit that the petitioners have never got intention to



cheat the complainant and still they are ready to execute a deed of rectification with regard to plot no. in the alleged sale deed."

7. Learned counsel for the petitioners submit that the allegation as contained in complaint petition is purely civil in nature and could have been easily resolved but the complainant has filed Title Suit No. 233/2013 in the court of learned Sub-Judge-1, Bhabhua, for cancellation of sale deed executed in favour of accused no. 1, thus it seems the complainant wants to come out of the arrangement on this pretext. Hence, the order taking cognizance and issuance of summon in the facts of the present case is only abuse of the process of Court.

8. Learned counsel for the petitioners further submits that so far as the allegation of abuse, assault and threaten are concerned, those are only ornamental in nature. A copy of the plaint of Title Suit No. 233/2013 is available on the record which would show that the complainant has filed the said title suit for a declaration that sale deed no. 485 dated 05.02.2013 in respect of Chak Plot No. 345 in Khata No. 138 measuring area 3 decimals be declared illegal, invalid and fraudulent.

9. Learned counsel for the petitioners submits



that in the facts and circumstances of the case, the complainant has given the entire matter a colour of criminal proceeding, even though it is at best a dispute of civil nature, that too there is no dispute with respect to the fact that there is a typographical error in the sale deed and the petitioners are ready and willing to execute a deed of rectification, but instead of getting the same done, the complainant has filed the complaint case which is an abuse of the process of Court.

10. No one has appeared on behalf of the complainant-opposite party no. 2 to oppose the application, even though notice was served to him as back as on 11.11.2013, and as per the office report, the process server reported that "Opposite party no. 2 refused to take his notice" hence, notice was affixed on the door. On 29.01.2014, vide order number 3, the service of notice was treated as valid.

11. Learned Additional Public Prosecutor though attempted to oppose the application in a routine manner but in the facts of the case he could not place any serious resistance to the argument advanced on behalf of the petitioners.

12. In have gone through the statements made



in the complaint petition and materials available on record which are in the nature of copies of certified copies of the sale deed in question and copy of the plaint of Title Suit No. 233/2013. Since, these documents available on record are uncontroverted and unimpeachable documents, this court has reasons to take those documents in consideration. In the case of **Prashant Bharti vs. NCT of Delhi** since reported in **AIR (2013) SCC 2753**; the Hon'ble Supreme Court has laid down the tests containing four steps for the purpose of relying upon the documents. Relevant part in paragraph '19' of the judgment is quoted hereunder:

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" The power vested in the High Court under Section 482 of the Cr.P.C., at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution's/ complainant's case without allowing the prosecution/ complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 of the Cr.P.C. the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the



charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice."

13. In the case of **Inder Mohan Goswami and Anr. Vs. State of Uttaranchal and Ors.** since reported in **(2007) 12 SCC 1**; the Hon'ble Supreme Court has taken note of the fact that in some of the cases civil disputes are given a colour of criminal proceeding which is an abuse of the process of court. An extract from the said judgment of Hon'ble Apex Court is quoted hereunder for a ready reference:

"This court in a number of cases has laid down the scope and ambit of courts powers under section 482 Cr.P.C. Every High Court



has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under section 482 Cr.P.C. can be exercised:

- (i) to give effect to an order under the Code;*
- (ii) to prevent abuse of the process of court,*
- and*
- (iii) to otherwise secure the ends of justice.*

Inherent powers under section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute."

14. In the present case, this court is of the view that the allegations contained in the complaint petition is of purely civil nature, and, in fact, the petitioners admitted that a rectification deed may be executed but complainant has got a title suit for a different purpose i.e. cancellation of the sale deed executed in favour of accused no. 1, therefore, the dispute has traveled in different direction. The allegations of threat and assault, as appeared in the last paragraph of the complaint petition, have been made in a routine and



ornamental manner as it happens invariably in the complaint cases which are provided legalistically.

15. The case is of purely in the nature of civil dispute, the order taking cognizance and issuance of summon against the petitioners are hereby quashed.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	13.07.2017
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