

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.46551 of 2013

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

=====

1. Vijay Kumar Son Of Ram Chandra Prasad R/O Village-Sinduria Chowk, Bairgania, P.S.-Bairgania, District-Sitamarhi
 2. Rubi Devi Wife Of Vijay Kumar R/O Village-Sinduria Chowk, Bairgania, P.S.-Bairgania, District-Sitamarhi Petitioners
- Versus

1. The State Of Bihar
2. Shailendra Kumar Jha Son Of Harsh Nath Jha R/O Village-Devapur, P.S.-Patahi, District-East Champaran Opposite Parties

=====

Appearance :

For the Petitioner/s : Mr. Ashar Mustafa, Advocate

For the Opposite Party/s : Mr. Alok Kumar Jha, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 19-07-2017

Heard learned counsel for the petitioners and
learned counsel for the opposite party no. 2. No one
appears on behalf of the State.

The petitioners, in the present application,
are seeking quashing of the order dated 16.09.2010, in
connection with Tr. No. 2035/2012 arising out of
Complaint Case No. C1-1021/2010, passed by learned
Judicial Magistrate, 1st Class, Sitamarhi, by which the
learned Magistrate has taken cognizance for the
offences punishable under Section 420 of the Indian
Penal Code and summoned to the petitioners.

The complaint petition contains specific
allegations against these petitioners, in fact, it is an



admitted position that petitioner no. 1 was a witness in the first deed, however the second deed has been got executed in favour of petitioner no. 2, who is wife of petitioner no. 1. Learned counsel for the petitioners has vehemently submitted that in the facts of the case the ingredients of Section 420 of the Indian Penal Code are not available, and, therefore, the order taking cognizance is fit to be quashed on this ground alone.

On the other hand, learned counsel for the opposite party no. 2 has opposed the prayer for quashing of the order and submitted that at this stage only a *prima facie* view has been taken by the learned Magistrate. So far as the materials available on record vis-à-vis the ingredients of Section 420 I.P.C. are concerned, those may be looked into by the learned Magistrate at the time of framing of charge.

Learned counsel for the opposite party no. 2 further submits that since it is a complaint case the complainant will have an opportunity to adduce evidences before charge, and even that stage has not come as yet. He submits that it would not be desirable to interfere with the order taking cognizance at this stage.

I have perused the records, the complaint



petition discloses a prima facie case against the accused persons. Scope and ambit of Section 482 Cr.P.C. does not suggest to interfere with the order taking cognizance in the facts of this case at this stage.

This application is dismissed as such. The petitioners, if so advised, may take all such pleas which are available to them before the learned Magistrate at the time of framing of charge.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

U		T	
---	--	---	--

