

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.45962 of 2013

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1. Dr. Mohammad Ali Siddiqui S/O Late Abdul Samad Resident Of Village-
Kumhar Basti, Police Station- Kishanganj, District- Kishanganj

.... Petitioner/s

Versus

1. The State Of Bihar

2. Mahfun Nisha W/O Samiruddin Resident Of Village- Tegharia City, Police
Station- Kishanganj, District- Kishanganj Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Md. Najmul Hoda, Advocate

For the Opposite Party/s : None

For the informant : None

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN

PRASAD

ORAL ORDER

5 05-07-2017 Heard Sri. Najmul Hoda, learned counsel for the

petitioner.

No one appears for the O.P. No. 2 and the State.

Petitioner in the present case is seeking quashing of the

order taking cognizance and issuance of summons dated

06.03.2009 in Complaint Case No. 179 of 2009 under Sections

323, 417, 384 and 504 Indian Penal Code.

Learned counsel for the petitioner submits that a bare

perusal of the complaint petition would show that in fact, the

whole case seems to be highly improbable based on a concocted

story and is out and out a mala fide prosecution of the petitioner

with an oblique motive.

Learned counsel for the petitioner further submits that

petitioner is a Doctor practicing in the District of Kishanganj and

he has been falsely implicated in the present case in order to



extract money from him. A copy of the complaint petition is Annexure-I to the present application. The allegation is that the complainant was taken to Md. Ali Siddiqui (the petitioner) by the accused Noor Mohammad and Izrail on the pretext of preparing papers for old age pension. The complainant alleged that she went to the house of the present petitioner, where the petitioner along with one Bijay Sonar and Shiv Shankar Sharma asked the complainant to put her thumb impression on a blank paper for the purpose of getting old age pension. It is alleged that she was given Rs. 500/- and was told that she will be getting pension.

Further allegation of the complainant is that on 10.09.2009 when she went to the house of the present petitioner, she was told that her land has been got recorded, for purpose of sell, on the said paper and the story of giving her pension was a mere pretext. The complainant alleged that she again went to the house of the accused persons on 12.02.2009 and she was again told that her 5 katha of land has been recorded in the document as *Bai- Bayana* (agreement to sell). She alleged that the accused persons told her that her signature has been forged on the said document, showed her a photo copy of the document and asked her to get away by vacating the land and house.

It is further alleged, that on protest the accused and his son abused her and pushed her out of the house. Learned counsel



has placed a certified copy of the statement made by the complainant on her solemn affirmation and the enquiry witnesses. A perusal of the statement of the complainant would show that there is no description of the land about which the accused is said to have got recorded an agreement to sell. The questions asked by the court, to the complainant witness no. 1 namely, Safayabal, are important to note. When the court asked this witness, whether he was present with the complainant, when she is said to have put her thumb impression on the blank paper, the answer came in negative. This witness says that the land is in the name of his father. He further says that the value of the land is Rs. 5,000/- and if the Doctor will give Rs. 5,000/-, he is ready to sell the land. Another witness, namely, Alimuddin has also stated that there was no person when the alleged thumb impression was taken.

Learned counsel for the petitioner submits that on the face of the deposition of the witnesses, the order taking cognizance is bad in law. It appears that learned Magistrate has taken cognizance in a routine and mechanical manner. He further submits that the value of the land is said to be Rs. 5,000/- . According to the witnesses, the land is in the name of his father, therefore, the whole allegation that the petitioner got thumb impression of the O.P. No. 2 and converted the same by way of a *Bai-Beyana* falsifies. Further the allegation is that the petitioner



who is a Doctor, having good practice in the area, got the *Bai-Beyana* created on the paper for a land worth Rs. 5,000/- seems highly improbable, false and is only a malicious allegation.

On going through the materials available on the record, which are basis of the order taking cognizance, this court is satisfied that the learned Magistrate has passed the order taking cognizance and issued summons in a routine and mechanical manner without there being any sufficient material to proceed against the petitioner.

This Court is satisfied that continuance of the criminal proceeding against the petitioner would only be an abuse of the process of Court.

In the facts and circumstances stated above, the criminal proceeding vide order dated 06.03.2009 passed in Complaint Case No. 179 of 2009 pending before learned Judicial Magistrate-IIInd Class, Kishanganj is hereby quashed.

(Rajeev Ranjan Prasad, J)

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