

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.26179 of 2013

Arising Out of Complaint Case No. -631 Year- 2008 Thana –Baroon District- AURANGABAD

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1. Dukhani Kuer Widow of Late Mungeshwar Singh, resident of village-Pitunwa, P.S- Paroon, P.S- Rampur, District- Aurangabad.
 2. Kamta Singh S/o Late Bishundeo Singh, resident of village-Pitunwa, P.S- Paroon, P.S- Rampur, District- Aurangabad.
 3. Parsidh Singh S/o Late Mungeshwar Singh, resident of village-Pitunwa, P.S- Baroon, P.S- Rampur, District- Aurangabad.
 4. Surendra Singh @ Surendra Kumar Singh S/o Kedar Singh Rampur, P.S- Baroon, P.O- Rampur, District- Aurangabad,
 5. Mithilesh Singh S/o Late Naresh Singh R/o Patari, P.S- Jamora, P.O- Jaigovind, District- Aurangabad.
 6. Deepak Kumar Singh S/o Bhola Bal Deep, Deed Writer, Court Compound, Distt.- Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Mostt. Shani Kuew Widow of Late Rajeshwar Singh, R/o Pithnawa, P.S- Baroon, P.O- Rampur, Distt- Aurangabad.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : M/s Kamta Prasad Roy and Kamteshwar Pd., Advts.
For the Opposite Party/s : Mr. Akhileshwar Dayal, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 08-09-2017

1. Heard both sides and perused the record.

2. This criminal miscellaneous application under section 482 of the Code of Criminal Procedure has been filed to quash the order dated 30.04.2013 passed by Sri Kumar Prakash Sahai, 1st Additional Sessions Judge, Aurangabad in Criminal Revision No. 12 of 2009/10 of 2009 whereby and whereunder the learned Additional Sessions Judge dismissed the revision application. The said criminal



revision was filed for quashing the order dated 06.12.2008 passed by Sri R.B. Tripathi, Judicial Magistrate 1st Class, Aurangabad whereby the learned Magistrate had taken cognizance against the petitioners under sections 467 and 468 and 120B of the Indian Penal Code vide Complaint Case No. 631 of 2008 (Trial No. 3376 of 2008).

3. The opposite party no. 2 had filed a complaint case against the petitioners alleging therein that the petitioner no. 4 in collusion with other co-accused got a registered document executed in his favour. The petitioner no. 1 executed a sale deed in favour of the petitioner no. 4, vide Sale Deed no. 5221 dated 20.05.2008 wherein she transferred 20 decimal land of plot no. 538 of Khata no. 52 which was in cultivating possession of the opposite party no. 2. The dispute between the parties has been settled as the opposite party no. 2 has already executed a registered sale deed in favour of the petitioner no. 1 on 25.04.2017 with respect to 19 decimal land of plot nos. 507/538 of Khata nos. 57/52 in dispute, vide deed no. 5055.

4. The learned counsel for the petitioners submits that the dispute between the parties is purely a civil dispute. It has been further submitted that the allegation of committing fraud and forgery is vague and so, no offence as alleged, is made out. The learned Court below has passed the impugned order without applying judicial mind and so, the said order is fit to be quashed.



5. The learned Additional Public Prosecutor, on the other hand, opposed the submission. The counsel for the opposite party no. 2 has appeared in this case, but he did not turn up to oppose the submission.

6. On perusal of complaint petition, I find that the complainant has alleged that the petitioner no. 1 executed a sale deed in favour of petitioner no. 4. The land has been transferred by petitioner no. 1 believing it to be her own land.

7. In *Mohammed Ibrahim and another vs. State of Bihar and another* (2009) 8 SCC 751, the Hon'ble Supreme Court has observed in paragraph 23 as under:

“When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is, the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint.”

8. The allegation made in the present case is similar to the case decided by the Hon'ble Apex Court (supra). The dispute



between the parties has been settled between the parties and a compromise petition to this effect has also been filed before the learned Court below. In such circumstances, the criminal prosecution of these petitioners appears to be an abuse of process of Court.

9. Having regard to the facts and circumstances of the case and taking into consideration the law laid down by the Supreme Court in the decision quoted above, the instant application deserves to be allowed. Accordingly, this criminal miscellaneous application is allowed and order dated 30.04.2013 passed in Criminal Revision No. 12 of 2009/10 of 2009 arising out of Complaint Case No. 631 of 2008 (Trial No. 3376 of 2008) as well as the criminal prosecution of the petitioners on the basis of said order is hereby quashed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	24.09.2017
Transmission Date	24.09.2017

