

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.42222 of 2013

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

- =====
1. Bhushan Singh Son Of Late Tanik Singh Resident Of Village -
Nepura, P.S. - Kashichak, District - Nawada
 2. Bipin Kumar Singh Son Of Late Tanik Singh Resident Of Village -
Nepura, P.S. - Kashichak, District - Nawada
 3. Most. Savitri Devi Wife Of Late Tanik Singh Resident Of Village -
Nepura, P.S. - Kashichak, District - Nawada
 4. Ramchandra Singh Son Of Laxmi Narayan Singh Resident Of
Village - Nepura, P.S. - Kashichak, District - Nawada
 5. Ashok Singh @ Ashok Kumar Singh Son Of Late Raj Kumar
Singh Resident Of Village - Nepura, P.S. - Kashichak, District -
Nawada.

.... Petitioners

Versus

1. The State of Bihar
2. Maheshwari Prasad Singh, son of Late Sidheshwar Singh,
resident of village - - Nepura, P.S. - Kashichak, District -
Nawada.

.... Opposite Party

=====

Appearance :

For the Petitioners : Mr. Nawal Kishore Singh, Advocate
For the Opposite Party : Mr. Murari Narayan Choudhary, Advocate

=====

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

Date: 26-07-2017

Heard learned counsel for the petitioners and
learned counsel for the opposite party no. 2.

The petitioners, in the present case, are
seeking quashing of the order dated 23.04.2013, passed
by the learned Judicial Magistrate, 1st Class, Nawada in
Complaint Case No. 518/2004 arising out of a protest



petition filed by the Complainant-Opposite Party no. 2 for the offences alleged under Sections 420, 467, 468 of the Indian Penal Code. Initially the Complainant-Opposite Party no. 2 lodged a Complaint Case No. 334/2000 in the Court of learned Chief Judicial Magistrate, Nawada which was referred under Section 156(3) Cr.P.C. for registering a First Information Report giving rise to Kashichak P.S. Case No. 35/2000 under Sections 302, 201, 467, 468 and 120B of the Indian Penal Code against the present petitioners.

The informant alleged that while the informant was living at Patna, his brother namely, Ram Lakhan Singh and family of his late brother Tanik Singh were living in the village. The informant alleged that his brother Ram Lakhan Singh was an educated person and after getting training from the Health Department was working in the village also. Family of Tanik Singh was indulged in flirting of said Ram Lakhan Singh. It is alleged that in past Ram Lakhan Singh had sold some of his land to other persons of the village through sale deed on which the informant also signed. The informant was separate in mess and business with his brothers and he was in possession of his share of land which he was cultivating.

It is alleged in the F.I.R. that because there was no legal heir of said Ram Lakhan Singh, the family of another brother Late Tanik Singh had their greedy eyes



over the properties of Ram Lakhan Singh and they wanted that somehow or the other his land come to them.

The informant allegedly got information on 29.04.2000 from an unknown person of his village that his brother Ram Lakhan Singh has been murdered and the dead body is in the process of cremation. The informant tried to know the name of person who had telephoned him but the said person refused to disclose his name. It is alleged that the person who had telephoned the informant also told him that the dead body will be cremated on the bank of river Ganga near Barahiya and further told him that he was the well-wisher of the informant and the telephone line was disconnected thereafter. It is alleged that on 30.04.2000, the informant reached near Barahiya Ghat but after not finding anybody there he came back to the village where informant came to know that the accused persons had burnt the dead body at Simariya Ghat because Ram Lakhan Singh being an issueless and aged person, many villagers had assembled and thereafter the dead body was cremated at Simariya Ghat. The informant alleged that the accused persons acted in conspiracy and on 28.04.2000 itself, they got thumb impression of Ram Lakhan Singh on some stamp papers and on which Ram Chandra Singh, son of Late Ram Lakhan Singh had put his signature as 'Bakalam Khas'. The informant also came



to know that on the said paper a forged sale deed was created on 29.04.2000 and by placing somebody else in place of Ram Lakhan Singh the execution was admitted. It is further alleged that forged sale deed has been obtained in respect of the land of the informant and in order to avoid disclosure of these facts the said Ram Lakhan Singh was murdered and his dead body was disposed of on the same day in haste. The informant thereafter claimed that he performed the last rites of Ram Lakhan Singh in the village, obtained a copy of the sale deed from the registry office and after finishing the Shradh ceremony, he lodged the case in question. A copy of the First Information Report is available on record as Annexure-1.

On behalf of the petitioners, materials have been placed in form of affidavit and order passed in the court of learned Magistrate showing that after investigation police submitted a final form on 03.03.2002. Certified copy of the final form is annexed as Annexure-3 series to the supplementary affidavit filed on behalf of the petitioners.

In course of investigation, police found that the said Ram Lakhan Singh was an old aged person, he was running a clinic at Warisaliganj, and was under treatment since 19.03.2000 under Dr. Indrajit Prasad. He died in course of treatment. On the direction of



Superintendent of Police the final form was submitted holding it a case of 'mistake of fact'. On receipt of final form with the case diary, the learned Chief Judicial Magistrate passed an order of issuance of notice to the informant and after receipt of notice the informant appeared in Court and participated in course of hearing on the point of acceptance of final form. On 08.07.2004, the informant appeared and filed an application that the final form may be accepted and his protest petition should be sent for registration as a complaint case. The learned Chief Judicial Magistrate vide his order dated 08.07.2004 accepted the final form submitted by the police as a case of 'mistake of fact' and sent the record for registering a complaint case on the basis of the protest petition.

A copy of the protest petition dated 29.08.2000 is available on the record, which was numbered as Protest Complaint Case No. 518/2004, after the order of the learned Chief Judicial Magistrate as referred above. A perusal of the protest petition would show that it is a verbatim reproduction of the statement made in the F.I.R. and then a statement has been made that the police is acting in collusion with the accused persons and were interested in closure of the case. A prayer had been made that the protest petition be kept on record and the copy of the same be sent to the Superintendent of Police, Nawada



for taking action against the accused persons.

The petitioners have also brought on record a copy of the plaint of Title Suit No. 62/2000 pending in the court of learned Sub-Judge-1st, Nawada, in which accused nos. 1, 2 & 3 are defendants along with others. This suit has been filed on or after 21.06.2000 i.e. one month after filing of Complaint Case No. 334/2000 in the court of learned Chief Judicial Magistrate, Nawada, which was referred under Section 156(3) of the Cr.P.C. to Kashichak Police Station for registering the F.I.R. giving rise to Kashichak P.S. Case No. 35/2000. In the title suit, the plaintiff claimed that said Ram Lakhan Singh was never separated; he was member of joint family and was coparcener. He had no intention to sell any joint family property. Further, it is stated in the plaint that Ram Lakhan Singh had no legal necessity of selling of any property of joint family. In the title suit, it is stated that during Shradh ceremony the plaintiff learnt from the defendants that Ram Lakhan Singh sold 2.43 acres of land to defendant no. 1 on 28.04.2000, for valuable consideration of Rs. 1,05,000/-, on this, the plaintiff was shocked and surprised and then a certified copy of the sale deed was obtained by the plaintiff on 08.05.2000, from which he came to know that the defendant had brought into existence forged and fabricated registered sale deed



no. 3988 dated 24.08.2000 alleged to have been executed by Ram Lakhan Singh. The plaintiff, therefore, challenged the alleged sale deed dated 28.04.2000 on the ground stated in the plaint. The plaintiff has sought various reliefs in the plaint including that for a declaration that the registered sale deed no. 3988 dated 28.04.2000 alleged to have been executed by Ram Lakhan Singh in favour of defendant no. 1 namely, Savitri Devi, is void, illegal without consideration and inoperative and are not binding on the plaintiff. This court has been informed that the title suit is still pending and the parties are contesting the same.

Now coming back to the protest petition giving rise to a Complaint Case No. 518/2004. The certified copy of the various orders passed by the learned Magistrate from time to time have been brought on record together with the copy of the deposition of witnesses under Section 202 of the Cr.P.C. At the very first instance, it is noticed by this Court that the Complaint Case remained pending for nine (9) years i.e. from 08.07.2004 till 23.04.2013 for inquiry under Section 202 of the Cr.P.C. and passing of an order on the point of cognizance. The complainant produced two witnesses namely, Sadhu Saran Singh and Arbind Kumar Singh who have supported the case of the complainant but in reply to the court's question these



witnesses have virtually fallen apart inasmuch as they have stated that they were not even aware of the place of death of the Ram Lakhan Singh and how he was killed. The witnesses said that they had heard about taking thumb impression of Ram Lakhan Singh on blank stamp paper which was converted in a sale deed. These witnesses have not claimed that they had any personal knowledge of preparation of any forged sale deed.

In this case, the opposite party no. 2 has appeared after notice but during pendency of this case for about four years approximately in this Court he has not filed any affidavit in opposition to dispute the documents brought on record with the affidavit filed on behalf of the petitioners, and, therefore, this Court has no reason to reject those documents. The documents available on record are in fact the certified copies of the F.I.R., complaint petition, deposition of witnesses, plaint and the certified copies of orders passed by the courts below which are all uncontroverted and unimpeachable documents, and therefore, in view of several judicial pronouncement of Hon'ble Apex Court including one in the case of **Prashant Bharti vs. NCT of Delhi** since reported in **AIR (2013) SCC 2753**; this Court relies upon those documents.

Learned counsel for the petitioners submits that in this case learned Magistrate has taken cognizance



of the offences under Sections 420, 467, 468 of the Indian Penal Code without there being any material available on record to show a *prima facie* case under those sections of the I.P.C. Further, learned counsel for the petitioners submits that continuation of the proceeding against the petitioners in the facts and circumstances of the case is a gross abuse of the process of the Court. Once the police investigated the matter and submitted a final form and there was no opposition to the said final form by the informant, the acceptance of the final form without opposition will bring an end to the matter and the learned Magistrate was not justified in allowing the protest petition to proceed even though he accepted the final form. Learned counsel was very specific in his argument that in any view of the matter it is at best a case of civil dispute, and therefore, should not be allowed to be converted into a criminal proceeding in the manner in which it has been sought to be done by the order taking cognizance passed by the learned Magistrate. According to him a Title Suit is already pending in the matter in which the sale deed is under challenge. Further, learned counsel submits that there are huge discrepancies in the statement made in the protest petition and in the title suit, the date of sale deed in Suit is 28.04.2000, whereas in the Protest Petition, it was alleged that the execution of the sale deed was



admitted on 29.04.2000. Further, it is alleged that the opposite party no. 2 has himself admitted that the facts regarding execution of sale deed by Ram Lakhan Singh came to his knowledge only on being informed by the defendants and, therefore, statement by way of allegations made in the protest petition only shows that the opposite party no. 2 acted with *mala fide* intention in firstly lodging the F.I.R. and then in filing the Protest Petition just to harass the petitioners. In this connection, he has relied upon the judgment of Hon'ble Supreme Court in the case of **State of Haryana Vs. Bhajan Lal** since reported in **(1992) Supp (1) SCC 335** and also of the judgment of Supreme Court in the case of **Inder Mohan Goswami and Anr. Vs. State of Uttaranchal and Ors.** since reported in **(2007) 12 SCC 1.**

On the other hand, learned counsel for the opposite party no. 2 has opposed the application and submitted that the protest petition was rightly registered as a complaint case and learned Magistrate has taken cognizance of the offences under Section 420, 467, 468 of the I.P.C. after finding a *prima facie* case on the basis of inquiry held under Section 202 of Cr.P.C. and, therefore, this Court should not interfere with the order taking cognizance. He admits that a title suit is going on between the parties.



I have heard learned counsel for the parties and perused the records. This Court finds that the nature of dispute between the parties is a pure and simple civil dispute which has been tried to be given a colour of criminal proceeding. The complainant on the one hand and the accused persons who came from the family of Late Tanik Singh are uncle and nephew and wife of the nephew respectively. Although in the plaint, the opposite party no. 2 says that his one of the brothers Ram Lakhan Singh was in the state of jointness when he died but in the complaint he has himself stated that informant was living at Patna and was separate in mess and business with his brothers and was cultivating his share of land. The dispute is over the properties of Ram Lakhan Singh who died leaving no legal heir. In the first round of investigation by police the case was not found true. The inquiry witnesses who were produced by the complainant after about 5 - 6 years are not even aware of the place of death of Ram Lakhan Singh. They are not the witnesses on the point that they had seen the accused persons creating any forged document which were allegedly converted as sale deed. The deposition of the witnesses which have been brought on record would not show a *prima facie* case under Sections 420, 468 and 468 of the Indian Penal Code. This Court also found that the title suit is pending between the parties where the sale



deed in question is under challenge. In the case of **Inder Mohan Goswami** (supra) the Hon'ble Supreme Court has noticed the circumstances under which civil disputes are some times given the colour of criminal proceeding. Their Lordships of the Hon'ble Apex Court in paragraph No. 23 and 24 held as under : -

"23. 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.*

24. 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."

In the facts of the present case, as has been held above, the case is in the nature of a pure civil dispute and since a title suit is already going on between the



parties in which the sale deed in question is under challenge, the order taking cognizance after about 13 years would only be an abuse of the process of Court.

The order taking cognizance is, therefore, set aside and this application is allowed.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	19.07.2017
Uploading Date	26.07.2017
Transmission Date	26.07.2017

