

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.33344 of 2011

Arising Out of Complaint Case No. -948C Year- 2011 District- PATNA

- =====
1. Priyanka Kumar wife of Sri Manoj Kumar
 2. Manoj Kumar, son of Late Muneshwar Prasad,
Both are residing in the building 'Manoram', situated in the east of Boring Canal Road, Patna, Police Station- Buddha Colony, District and Town of Patna.

.... Petitioners

Versus

1. The State of Bihar
2. Alok Raj, son of Dr. Rajeshwar Prasad, resident of 'Mangal Bhawan', Mohalla-Mehendru, Police Station- Pirbahore, District and Town of Patna

.... Opposite Parties

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Appearance:

For the Petitioner : Mr. Gyanand Roy, Advocate.
For the Opposite Parties : None

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 24-04-2017

The present petition has been filed for quashing the order dated 03.06.2011 passed by Judicial Magistrate 1st Class, Patna taking cognizance against the petitioners in Complaint Case No. 948(C) of 2011 for the offences under Sections 420, 465, 471 and 193 of the Indian Penal Code.

2. Mr. Gyanand Roy, learned counsel for the petitioners submits that the criminal complaint has been filed against the petitioners maliciously in the backdrop of ongoing civil litigation between the parties who are related to each other. Petitioner No. 1 Priyanka Kumar and the complainant Alok Raj are contesting Probate Case No. 28 of 2002 subsequently converted into Title Suit No. 12 of



2008 relating to the will dated 03.02.1987 executed by their grandfather Late Basant Lal. Petitioner No. 2 Manoj Kumar is the husband of petitioner no. 1 Priyanka Kumar.

3. It is further submitted that the thrust of allegation in the complaint is against Preeti Lal, mother of the petitioner no. 1, who is said to have filed an application for mutation of the concerned property suppressing the fact of the ongoing Title Suit No. 12 of 2008. It is stated that the said Preeti Lal has since died and as such even if the accusations in the complaint be accepted at face value, no criminal offence is made out as concerns the present petitioners and no overt act of criminal nature has been attributed to the petitioners who are merely said to be the beneficiaries.

4. None appears on behalf of the State nor on behalf of the opposite party no. 2, who has consistently failed to appear in the matter and finally refused to accept service of notice as recorded in the order of this Court dated 11.07.2014.

5. This Court finds merit in the application, inasmuch as even according to the averments in the complaint, no criminal offence is made out against the petitioners. The accusation of having filed the application for mutation suppressing the fact of the pending Title Suit is only against Preeti Lal who has already died. In such circumstances, continuance of the criminal proceedings against the petitioners would amount to abuse of process of the court and accordingly the impugned



order dated 03.06.2011 passed by the Judicial Magistrate 1st Class, Patna taking cognizance in Complaint Case No. 948(C) of 2011 against the petitioners is accordingly quashed and the petition stands allowed.

6. Registry is directed to send back the lower court records without any delay.

(Vikash Jain, J)

Md. Ibrarul/BT

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	28.04.2017
Transmission Date	28.04.2017

