

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.33427 of 2011

Arising Out of PS. Case No. -1805 Year- 2010 Thana -Complaint Case District- BHOJPUR

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Ajay Kumar Singh @ Lakaru Singh son of Late Loka Singh @ Lokh Nath Singh
Resident of Village - Piyania, P.S. Udwant Nagar, District - Bhojpur (Ara)

.... Petitioner

Versus

1. The State of Bihar

2. Most. Basmato Kunwar Wife of Late Suryanath Singh resident of Village -
Piyonia, P.S. Udwantnagar, District - Bhojpur

.... Opposite Parties

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Appearance :

For the Petitioner: Mr. Sumeet Kumar Singh,

Mr. Binod Kumar Singh, Advocates

For the State : Mr. Rajendra Prasad Nat, APP

For the O.P. No. 2 : Mr. Rajendra Nath Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 25-04-2017

Heard learned counsel for the petitioner, learned A.P.P.

for the State and learned counsel for the Opposite Party No. 2.

2. The present petition has been filed for quashing the order dated 14.3.2011 passed by the Judicial Magistrate 1st Class, Arrah taking cognizance against the petitioner in Complaint No. 1805(C) of 2010 / Tr. No. 5217 of 2010 for the offences under section 420 IPC.

3. The relevant facts of the case in short are that while the complainant was passing by the Registry Office, she saw her nephew, the petitioner herein, talking to some persons and coming out of the registry office which raised suspicion in her mind. On enquiry



made from one of the accused persons, namely, Kaushal Kishore, she learnt that the petitioner had executed a sale deed with respect to land situated in village Piyania and the accused persons had come to him for receiving the documents. She also learnt from the registry office that the petitioner had sold 31 decimals of land bearing plot no. 412 to one Rajeev Kumar Singh, though the petitioner had no right and title in the said land.

4. Learned counsel for the petitioner, Mr. Sumit Kumar Singh, submits that the criminal prosecution of the petitioner for a transaction, which is predominantly of civil nature, amounts to abuse of process of the Court. It is submitted that the petitioner is the rightful owner of the land and in whose favour Land Possession Certificate had also been issued and he had every right to sell the land. The purchaser has not come forward to complain that the petitioner had cheated him by selling the land which did not belong to him nor it is a case of impersonation by the petitioner while selling the land. He relies on the decision of a coordinate Bench of this Court reported in the case of *Abhay Kumar Chatterjee vs. State of Bihar, 2013 (2) PLJR 556*.

5. Learned counsel for the complainant-opposite party no. 2 appears and opposes the application, submitting that there is no bar to continuance of criminal proceeding and civil proceeding



simultaneously. It is further submitted that at the stage of taking cognizance, all that is required to be seen is whether there was a prima facie case before the learned Magistrate for taking cognizance of the offence and as such the impugned order calls for no interference.

6. Having heard the parties and on careful consideration of the materials on record, this Court finds considerable merit in the application. The petitioner and the opposite party no. 2 are relatives and the dispute relates to land which originally belonged to late Basanti Singh and devolved upon his heirs including the parties herein. It is, therefore, evident that both parties are owners of the land in question and in respect to which the petitioner has already filed Title Suit No. 314 of 2009 against the complainant which is pending in the court of Sub-Judge-VIII, Bhojpur at Arrah. It is abundantly clear that the entire dispute between the parties has a predominantly civil flavour and the complainant is trying to put pressure upon the petitioner by taking recourse to criminal proceeding. Moreover, considering that the complainant has admittedly not been deceived nor induced into making any payment to the petitioner, the ingredients of section 420 of the IPC are not made out at all.

7. In **Abhay Kumar Chatterjee vs. State of Bihar** (supra) relied upon by the petitioner, this Court has held as such:

“19. In view of the aforesaid judgment, this Court is



of the view that the present attorney-holder has wrongly filed the complaint petition so much so that the land which has been claimed by him as a deed of gift cannot be a matter of criminal case because status of gift can only be tested in the properly constituted civil suit. Even presuming the present petitioners No. 1 to 5 have no right over the property but they have sold the same that can be a matter of civil dispute, as the statement made in complaint petition as well as surrounding circumstances shows that only the cause for the present case is the execution of sale deed by the other family members. Unless the deed of gift is declared to be valid or unless he gets an order by the court of competent jurisdiction about the status of deed of gift, which has been denied by the other family members, cannot be decided in a criminal case and it cannot lead to inference of commission of criminal offence, basically it is a civil dispute between the parties.

20. This view is fortified from the judgment reported in 2009(4) PLJR 99 (Md. Ibrahim vs. State of Bihar) where the Hon'ble Supreme Court has considered the scope of different Sections of the Indian Penal Code and held that the sale deed is executed conveying a proper deed claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand,



the purchasers are made co-accused brothers have been arrayed as accused claiming share over the property, cannot be subject-matter of criminal offence. It will be relevant to quote paragraph-14 of the said judgment:-

Para-14 - When a sale deed is executed conveying a proper deed claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reasons of being the witness, scribe the stamp vendor in regard to the sale deeds,



deceived the complainant in any manner. As the ingredients of cheating as stated in Section 415 are not found, it cannot be said that there was an offence punishable under Sections 417, 418, 419, or 420 of the Code.”

8. In the above view of the matter, this Court is of the view that continuance of the criminal proceeding against the petitioner would amount to abuse of process of the Court. Accordingly, the impugned order of cognizance dated 14.3.2011 passed in Complaint Case No. 1805(C) of 2010 / Tr. No. 5217 of 2010 is hereby quashed. The application stands allowed.

9. Let the Lower Court records be returned forthwith.

(Vikash Jain, J)

S.Sb/BT

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