

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.33290 of 2014

Arising Out of PS.Case No. -830 Year- 2013 Thana -KATIHAR COMPLAINT CASE District-
KATIHAR

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1. Md. Manjoor Alam, son of Late Salim.
 2. Md. Samim, son of Sk. Mahboob.
 3. Md. Kalim, son of Sk.Khalil.
 4. Ajizul Haque, son of Sk. Balli.
 5. Sk. Hakim son of Sk. Balli.
 6. Md. Shamshad, son of Md. Mohazid.
 7. Sk. Ushman, son of Sk. Manglu.
All are resident of Village Garbheli, Police Station - Katihar (M), District – Katihar.
 8. Hareram Thakur, son of Late Bhola Thakur, resident of Registry Office, Katihar, Police Station- Katihar, District -Katihar.

.... Petitioners.

Versus

1. The State of Bihar.
2. Md. Ashlam, son of Sk. Wahid, resident of Village Garbheli, Police Station - Katihar (M), District – Katihar.

.... Opposite Parties.

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Appearance :

For the Petitioners : M/s. Bimal Kumar and Birendra Kumar and Mrs. Maruti Kumari, Advocates.
For the State : Mr. Dashrath Mehta, A.P.P.
For the Opposite Party No.2 : None.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

Date: 08-08-2017

Heard learned counsel for the petitioners and the learned A.P.P. for the State. No one appears on behalf of the opposite party no.2 despite service of notice upon him.

2. This application, under Section 482 of the Code of Criminal Procedure, is directed against the order dated 01.02.2014 passed in C.A. Case No.830 of 2013, whereunder the court of the



Judicial Magistrate, First Class, Katihar, summoned the accused-petitioners, on inquiry, under Section 204 of the Code of Criminal Procedure, finding prima facie case under Sections 147 and 417 of the Indian Penal Code against them.

3. The facts leading to this application is that the complainant/opposite party no.2 filed Complaint Case No.830 of 2013 in the court of the Chief Judicial Magistrate, Katihar, stating therein that Khata No.171 of village-Garbheli was recorded in the name of Sheru, Chichai and Sobarati. Sobarati sold the land of his share to Sheru and Chichai by executing the sale deed on 25.01.2016. Thereafter, Sheru and Chichai came in peaceful possession over the said land. Chichai executed the will of the land of his share in favour of his son Sk. Wahid on which accused-petitioner no.1 Md. Manjoor Alam put his signature as a witness. Later on, Wahid executed the gift deed in favour of his four sons on 21.11.1998 on which the accused-petitioner no.1 also put his signature as a witness. Thereafter, all the four sons of Wahid executed the sale deed on 24.01.2012 in favour of Taufique Alam and since then he is coming in peaceful possession over the aforesaid land. After some days of execution of sale deed by four sons of Wahid, Taufique Alam came to know that accused-petitioner nos.4 and 5, the grand sons of Sobarati, under conspiracy executed the forged sale deed in respect of the aforesaid



land in favour of accused-petitioner nos.1, 2 and 3, the grand sons of Sheru on which the accused -petitioner no.6 put his signature as a witness and accused-petitioner no.7 put his signature as identifier. The aforesaid sale deed was scribed by the accused-petitioner no.8. As such, the accused-petitioners under conspiracy got executed the sale deed of the said land and used to give threatening to dispossess. The accused-petitioners also wants to occupy the house situated over the aforesaid land.

4. Learned counsel for the petitioners submits that the story as narrated in the complaint petition about executing the sale deed by Sobarati, the grandfather of the accused-petitioner nos.4 and 5, in favour of Sheru, the grand father of accused-petitioner nos.1 to 3, is false. In fact, after filing of Title Suit No.84 of 2013 by the accused-petitioner no.1, in which the father of the complainant/opposite party no.2 is defendant, for partition of the land, as detailed in Schedule-A of the plaint of Title Suit No.84 of 2013, this false case has been lodged by the complainant/opposite party no.2 only to give undue pressure. Moreover, the dispute, as detailed in the complaint petition, is of civil nature.

5. On going through the complaint petition, it appears that the petitioner nos.4 and 5, grand sons of Sobarati, executed the sale deed in favour of the petitioner nos.1 to 3, grand sons of Sheru, and



Title Suit No.84 of 2013 for partition covering the land in dispute is filed by the petitioner no.1, which is pending for disposal . As such, the ingredients, as required for constituting the offence under Section 417 of the Code of Criminal Procedure is lacking. So far as the offence under Section 147 of the Indian Penal Code is concerned, from perusal of the complaint petition, the same is also lacking. The dispute appears to be of civil in nature. As such, the impugned order dated 01.02.2014 passed in C.A. Case No.830 of 2013 by the court of the Judicial Magistrate, First Class, Katihar, summoning the accused-petitioners, on inquiry, under Section 204 of the Code of Criminal Procedure, finding prima facie case under Sections 417 and 147 of the Indian Penal Code appears to be illegal and the same amounts to an abuse of the process of the Court.

6. Accordingly, the impugned order dated 01.02.2014 passed in C.A. Case No.830 of 2013 by the court of the Judicial Magistrate, First Class, Katihar, is hereby quashed and this application is allowed.

(Rajendra Kumar Mishra, J)

P.S./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.08.2017.
Transmission Date	16.08.2017.

