

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.19065 of 2014

Arising Out of PS.Case No. -1673 Year- 2012 Thana -COMPLAINT CASE District- ARRARIA

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1. Sajjad Shah Ali Sajjad Alam @ Shah Ali Sajjad, S/o Saiyad Shah Sharf Alam Resident of Shah Manzil Khalifabad, P.S. Kotwali, District Bhagalpur.
 2. Md. Afroz Khan S/o Late Gulam Rasool Resident of Rahika Tola, Ward No. 17, P.S. Araria, District Araria.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Wasim Anwar Zaki S/o Late Ayazuddin Resident of Renupath, Jaiswal Nagar, Ward No. 22, Araria Municipal Council, P.S. Araria, District Araria.

.... Opposite Party/s

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Appearance :

For the Petitioner/s :

For the Opposite Party/s :

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 17-08-2017

Heard learned counsel for the parties.

2. This application is filed by the petitioners for setting aside the order dated 20.09.2013 passed by the Judicial Magistrate, 1st Class, Araria in Complaint Case No. 1673 of 2012 whereby he has taken cognizance of offence under Sections 323, 385, 406 and 504 of the Indian Penal Code.

3. Learned counsel appearing on behalf of the petitioners, who are accused in Complaint Case No. 1673 of 2012, submits that no case of breach of trust or of extortion is made out. He further contends that allegation against petitioners if of creating a forged gift deed (*Hibbanama*) executed by Md. Zahiruddin, uncle of the



complainant, in favour of the accused. He further submits that only allegation with regard to forgery is that Zahiruddin was not in a fit mental state, he was ill so he had no proper faculty of understanding except that, there is no other allegation and it is not alleged that Zahiruddin has not executed the *Hibbanama* rather it is a registered deed presented by Zahiruddin himself in the year 2009. He further contends that the deed contains the photographs of Zahiruddin and other identifiers, his son-in-law Md. Shams Reza has also put his signature as a witness on the said deed. The complainant happens to be nephew of Zahiruddin, so can not get share in the property of Zahiruddin, therefore, filed this complaint case and also filed a title suit for setting aside the deed of gift.

4. Learned counsel appearing on behalf of the complainant submits that Malika Bano Wakf Trust was created in whose favour *Hibbanama* was executed and accused persons were made Mutawalli but the Trust is not a registered one, therefore, they have brought into existence a forged gift deed.

5. The allegation in the complaint is that the deed of gift (*Hibbanama*) was executed on 25.02.2009/27.02.2009 and 27.02.2009 while Zahiruddin was not in a fit state of mind and he died on 03.03.2010. There is no material on record to show that Zahiruddin was not in a fit state of mind on 25.02.2009 and this is also not the



case of the O.P. No. 2 that Zahiruddin was mentally ill or suffered from any mental abnormality. So execution of the said deed of gift does not come within the purview of making of a false document. Further, there is no any material showing *prima facie* that breach of trust relying to entrustment of any property of the complainant by the accused persons or any *prima facie* evidence of committing extortion against them rather dispute appears entirely civil in nature and a title suit haws also been filed for setting aside the deed of gift. So the present case is malicious in nature and the continuation of the criminal proceeding would be an abuse of the process of the court. Hence, the entire criminal proceeding including the cognizance order dated 20.09.2013 passed by the Judicial Magistrate, 1st Class, Araria in Complaint Case No. 1673 of 2012 is hereby set aside and the application stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.09.2017
Transmission Date	04.09.2014

