

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.13429 of 2014

Arising Out of P.S.Case No. -457 Year- 2013 Thana -PATNA COMPLAINT CASE District-
PATNA

- =====
1. Satyendra Kumar @ Rajeev Ranjan
 2. Aswani Kumar Both Sons of Late Chandeshwar Prasad Resident Of Mohalla-
Gabhtal Akhara Road, Danapur, P.S- Danapur, District- Patna.

.... Petitioners

Versus

1. The State of Bihar
2. Sumit Kumar Verma Son of Late Surendra Kumar @ Satyapal Verma Presently
Resided as Nakhash Pind, P.O- Begumpur, P.S- Malsalami, Patna City, District-
Patna.

.... Opposite Parties

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Appearance :

For the Petitioners	:	Mr. N.K.Agrawal, Sr. Advocate
	:	Mr. Ashok Kumar Jha, Advocate
For the Opposite Party No.2	:	Mr. Sanjay Kumar, Advocate
For the State	:	Mr. Humayu Ahmad Khan, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 13-09-2017

This criminal miscellaneous application under Section 482 of the Cr.P.C. has been filed to quash the order dated 05.12.2013 passed by Judicial Magistrate, Ist Class, Danapur in Complaint Case No.457C of 2013 whereby and whereunder the learned Magistrate finding prima-facie case for the offence under Sections 420, 467, 468 and 120B of the IPC took cognizance and summoned the petitioners.

2. Heard and perused the record.

3. The Opposite Party No.2 filed a complaint case on the file of CJM alleging inter-alia that these petitioners filed a title



(Partition) Suit No.112 of 1986 against his parents and brothers and they in collusion with each other obtained a compromise decree by committing fraud and forgery. The father of Opposite Party No.2 was one of the co-sharer having 1/5th share in the suit property. But he was neither impleaded as party to the suit nor the plaintiff made any averment about his existence in the plaint of P.S.No.112 of 1986 and so the petitioners have committed fraud and forgery.

4. The learned counsel for the petitioners submits that the dispute between the parties is purely a civil dispute. The father of the Opposite Party No.2 was separated by his parents and brothers giving him due share at village Nakhas Pind, Patna City as per his desire and consent of other co-sharers besides some cash amount for construction of building at Nakhas Pind, Patna City. The grand mother of the complainant had some land at her Maike and she executed a deed of gift in the name of complainant's father by way of adjustment to the share of Satyendra Kumar. Since the father of complainant was given share at Patna City, he was not impleaded as party to the suit. The present case has been filed by the complainant after the death of his father and grand father which shows the case has been filed maliciously in the background of civil dispute. The learned Magistrate has passed the impugned order in mechanical manner without appreciating the fact that the dispute between the parties is purely a



civil dispute and so the impugned order is fit to be quashed. The learned counsel for the Opposite Party No.2 opposed the submissions.

5. Perused the complaint petition, documents on record as well as the counter affidavit. It appears that the petitioner no.1 as sole plaintiff filed Title Suit No.112 of 1986 against his two brothers and parents alleging that the property mentioned in schedule A and B were his ancestral property and the same came in exclusive share of his father on partition from his full brother. In the said partition suit, the Opposite Party No.1 was not made party. There is absolutely no averment about the existence of the father of Opposite Party No.2. It has been simply stated that the property mentioned in the schedule of the plaint were in joint possession and were sought to be partitioned between the three brothers and their parents. The father of Opposite Party No.2 admittedly was one of co-parcener. He has been deprived from the said property only for the reason that some property was bequeathed by his maternal-grand-mother at Patna City. The matter would have been otherwise if the plaintiff had disclosed this fact in the plaint. He was necessary party to the suit. This is not a case of non joinder of necessary party rather this is a case of suppression of fact and obtaining a decree fraudulently by misrepresenting the Court. The father of Opposite Party No.2 had right in the properties which were partitioned among the three brothers and parents excluding the father



of Opposite Party No.2. The petitioner no.1 filed Cr.Misc.No.769 of 2010 before this Court for setting aside the order of Sub-Judge passed in Cr.Misc.No.4 of 2006. This Court while rejecting the revision of petitioner no.1 has observed at paras-13 and 14 of the order as follows:-

“13. In the present case the fact of Surendra Kumar @ Satyapal Verma as one more son of Chandeshwar Prasad Singh and thus a coparcener having a share in the suit property had been actively suppressed by the parties to the suit for obvious reasons. The fact of relinquishment by him of his share in the joint family property after accepting “Nanihali” property by gift, which might have justified his non-impleadment as party to the suit, had also not been mentioned in the pleadings. The court was clearly made to believe that all the persons interested in the suit property and having a share in it were present before it and had settled their dispute by compromise. The court, thus, had accepted the compromise in the background of the facts as presented before it by the parties to the suit.

14. The issue of suppression of material facts amounting to commission of fraud upon the court has come to be examined by a bench of this Court in (Bindeshwari Pd. Chaudhary Vs. Debendra Pd. Singh & Ors. (AIR 1958 Patna 618), and it has been observed as follows:-

“... If fraud has been committed upon the party and as a result of that fraud the court has been misled into passing certain orders which otherwise it would not have passed, then it is a fraud upon the court itself and that in such case, under its inherent powers the Court is not only entitled to, but it must, set aside any order or orders which may have been passed by it upon a false representation...”

The Hon’ble Supreme Court has also considered the facets of fraud upon court and the exposition of law in this regard made in (Ramchandra Singh Vs. Savitri Devi) 2003 (4) PLJR 208 (SC) is as follows:-

“18. A fraudulent misrepresentation is called deceit and consists of leading a man into damage by willfully or recklessly causing him to believe an act



on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injuries ensue therefrom although the motive from which the representations proceeded may not have been bad.”

It has been further observed:

“An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to property would render the transaction void ab initio. Fraud and deception are synonymous”.

Similar view has been expressed by the apex court in (S.P. Chengalvaraya Naidu Vs. Jagannath)1994 1 SCC 1 observing as follows:-

“... The courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands ... The fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another loss. It is a cheating entertained to get an advantage ... A litigant, who approaches the court, is bound to produce all the documents executed by him, which are relevant to the litigation. If he withholds a vital document in order to get advantage on other side then he would be guilty of playing fraud upon the court as well as on the opposite party...”

6. As seen above the petitioner No.1 suppressed the material fact as regards existence of one of the co-sharer in order to grab his share and compromised the case by making the Court to believe that all the share holders in the suit property had settled their dispute by way of compromise. The conduct of the petitioner no.1 in suppressing the material fact shows his mens rea of committing fraud on his part. The order of learned Magistrate although is cryptic and



does not disclose all the facts, but when I consider all these facts placed before this Court, I find that the order taking cognizance under Sections 420, 467, 468 and 120B of the IPC cannot be said to be passed in mechanical manner without applying judicial mind.

7. Having regards to the above discussions and materials on record, I do not find any merit in this application. This application is accordingly dismissed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	AFR
CAV DATE	
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