

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.18308 of 2014

Arising Out of PS.Case No. -516 Year- 2013 Thana -NALANDA COMPLAINT CASE District-
NALANDA (BIHARSHARIFF)

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1. Bhishan Prasad @ Bhishan Kumar .
 2. Ramprasad Gope @ Ramprasad Yadav Both sons of Late Chamari Das resident of Loharwa Bigha, P.S. - Hilsa, District - Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Chandrakant Prasad son of Late Munna Prasad resident of Vishkurwa, P.S. - Hilsa, District - Nalanda.

.... Opposite Party/s

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Appearance :

For the Petitioners : Mr. Uday Prasad, Advocate
For the Opposite Party : Mr. Samir Kumar Bharti (Advocate)
Mr. Anil Kumar Singh, Adv.
For the State : Nawal Kishore Prasad, APP>

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 03-11-2017

1. Heard learned counsel for the petitioners and the State.

2. This application has been filed for quashing the order dated 06-01-2014 passed by learned Sub Divisional Judicial Magistrate, Hilsa, Nalanda in Complaint Case No. 516 (C) of 2013 by which, the learned Magistrate after holding inquiry u/S 202 Cr.P.C. has found prima facie against the petitioners for the offence under Section-384, 467, 468, 471 of the IPC.

3. Counsel for petitioners has submitted that this is purely a matter of civil dispute. The alleged sale deed is said to have been executed on 12-11-1973. The complainant has alleged in the



complaint petition that the sale deed has been executed by both these petitioners in favour of the complainant on 12-11-1973 and in that sale deed plot No. has wrongly been mentioned as 887 in place of 687. The complainant made request with the petitioners several times to make necessary correction and also to file petition in Circle Office but they did not take appropriate steps although the petitioners have assured that they will not raise any objection in Circle Office. The complainant has further alleged that in the Circle Office, the C.O. passed necessary orders in favour of the complainant as no objection was raised by these petitioners but later on, when petitioners learnt that mutation with respect to Plot No. 687 has been done in favour of the complainant, then petitioners challenged that order of Circle Officer before Deputy Collector Land Reforms (DCLR) vide Case No. 20/2012-13 and notice was issued in that case which was received by the complainant. Thereafter, the complainant learnt that the petitioners have committed cheating with him and has wrongly mentioned plot No. 887 in place of 687. Counsel for petitioners has submitted that an appeal was filed by petitioner No. 1 before DCLR vide Case No. 20 of 2012-13 against the order dated 16-01-2012 passed in Mutation Case No. 1623/2011-12 which was rejected by order dated 17-10-2013. Thereafter, the petitioner No. 1 filed Revision Application before Additional Collector vide Revision No.



10 of 2013-14 and the same was allowed by learned Additional Collector vide order dated 14-07-2014. Thereafter, the complainant filed application before the Bihar Land Tribunal, Patna for setting aside the order of Additional Collector by order dated 14-07-2014 vide BLT Case No. 643 of 2014 which was rejected by order dated 25-08-2015. The order of Additional Collector dated 14-07-2014 and the order passed by Bihar Land Tribunal dated 25-08-2015 have been annexed by the petitioners as Annexures-6 & 7 of the supplementary affidavit filed on behalf of petitioners.

4. Counsel for opposite party No. 2 has submitted that petitioners have deliberately mentioned plot No. 887 in place of 687 which caused wrongful loss to the complainant. The court below has legally found prima facie case against the petitioners for the offence under Sections-384, 467, 468, 471 of the Indian Penal Code. Learned APP has also submitted that there is no illegality in the impugned order.

5. From perusal of the impugned order and also looking into allegation made in the complaint it appears that alleged sale deed has been executed in favour of the complainant on 02-11-1973. The complaint has been filed in the year 2013 after lapse of more than 40 years. In the complaint petition, the complainant alleged that in the sale deed executed by these petitioners plot No. was mentioned



wrongly as 887 in place of 687. It further appears that the complainant took steps for mutation of aforesaid land in his favour on the basis of aforesaid sale deed before the Circle Officer which was allowed without issuing notice to the petitioners. Thereafter, petitioners challenged the aforesaid order before the DCLR which was rejected. Thereafter, they have challenged the order of DCLR before the Additional Collector which was allowed vide Annexure-6. The complainant has thereafter, challenged the order of the revisional authority before the Bihar Land Tribunal and the petition filed by the complainant was rejected by Bihar Land Tribunal, Patna (Annexure-7) as mentioned above in detail.

6. In such circumstances, for the allegation as made by the complainant in complaint petition, civil remedy has already been exhausted by the complainant as well as petitioners. The dispute as alleged in the complaint petition is purely a civil dispute.

7. Therefore, this court finds that the impugned order passed by the court below is not in accordance with law.

8. Accordingly, the continuance of criminal prosecution against the petitioners in this case is mere harassment to the petitioner and an abuse of the process of court.

9. Accordingly, the impugned order dated 06-01-2014 passed by the learned Magistrate in Complaint Case No. 516 (C) of 2013 along



with entire criminal proceeding with respect to the petitioners is hereby quashed.

This Cr. Misc. Application is *allowed*.

(Sanjay Priya, J)

A.K.V./-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	10-11-2017
Transmission Date	10-11-2017

