

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.36736 of 2014**

Arising Out of PS. Case No.-76 Year-2013 Thana- COMPLAINT CASE District- Sheohar

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1. Manoj Upadhyay son of Sachindra Upadhyay
2. Ravi Shankar Singh, son of Mahesh Singh
3. Harendra Kumar Singh, son of late Ramadhar Singh, All resident of village-Mahuariya, P.S. Sheohar, Distt. Sheohar.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Divesh Kumar Singh @ Kanhaiya Singh, son of Thakur Murari Singh, resident of village-Mahuarihya, P.S. Sheohar, Distt. Sheohar.

... .. Opposite Party/s

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**Appearance :**

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| For the Petitioner/s     | : | Mr. S. K. Thakur, Advocate   |
|                          |   | Mr. Devendra Kumar, Advocate |
| For the Informant        | : | Mr. Vijay Bharti, Advocate   |
| For the Opposite Party/s | : | Mr. Ram Naresh Ray(APP)      |

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**CORAM: HONOURABLE MR. JUSTICE S. KUMAR**

**C.A.V. JUDGMENT**

**Date : 08-11-2017**

1. Heard the parties.
2. This petition under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 23.08.2013 passed by learned Judicial Magistrate, Ist Class, Sheohar, in Complaint Case No. C-1/76 of 2013 taking cognizance under Sections 467 and 120B of the Indian Penal Code against the petitioners.
3. Briefly stated facts of the case is that Devesh Kumar Singh @ Kanhaiya Singh filed a complaint petition before the learned Chief Judicial Magistrate, Sheohar, on 06.03.2013 alleging that there was an amicable partition amongst the co-



sharers on 18.01.2001 in which all the family members have got their shares in the joint family property. In the year 2007 his uncle instituted one Title Suit for partition of joint family property giving rise to Title Suit No. 80 of 2007 in which injunction order was passed by the trial court restraining all parties from alienating any of the suit property without permission of the court.

4. The complainant was examined on solemn affirmation and three witnesses were also examined on behalf of the complainant in support of his complaint case and some documents were also filed and on the basis of solemn affirmation of the complainant and statement of witnesses, the trial court found a prima facie case made out against the petitioners under Section 467 r/w 120B of the Indian Penal Code and issued summons against all nine accused including three petitioners for appearance and to face the trial. It has been contended by learned counsel for the petitioners that they have not committed any offence and have falsely been implicated in this case. It has been submitted that on plain reading of the complaint petition no criminal offence is made out against the petitioners. The dispute, if any, is of civil nature. The petitioners are not the parties in the Partition Suit. As such, any



order of injunction passed by the court in which Partition Suit is pending was not binding upon them. The sale deed has been executed in favour of Petitioner No. 1 (accused no. 2) by accused No. 1 after receiving the consideration money and petitioner No. 2 (accused no. 4) and petitioner No. 3 (accused No. 3) are the attesting witnesses of the said sale deed. No ingredients in order to constitute offence under Section 467 of the Indian Penal Code is made out against the petitioners.

5. It has been contended on behalf of opposite party no. 2 that the trial court has rightly taken cognizance of the offence against the petitioners and the purchased property is the exclusive property of complainant's father and the same was sold by Sonu Kumar Singh (accused no. 1) in violation of the injunction granted in Title Suit No. 80 of 2007 which is pending before Sub-Judge-I, Sitamahri. The vendor (accused No. 1) is one of the parties in the suit and inspite of injunction order passed by the court he has sold the property by sale deed dated 18.02.2013. The vendor Sonu Kumar Singh (accused No. 1) belongs to the same family but he along with his father has already sold the entire property and now they have no share left but are still transferring the land of complainant's share in excess of their share.



6. A reply has also been filed on behalf of the petitioners in which it has been stated that the complaint case on 06.3.2013 of similar allegation was filed and same was sent to the police station to lodge F.I.R. and Sheohar P.S. Case No. 54 of 2014 with respect to the same land was registered and police submitted final form describing the case to be civil dispute and the complainant filed Protest -cum-Complaint Case No. C1-316 of 2016 which was also dismissed and another Complaint Case No. C1-3045 of 2012 was also filed only to harass the petitioners.

7. From the contents of complaint petition and the materials available on record it appears that it is out and out a civil dispute and no criminal offence is made out. No ingredients in order to constitute offence under Section 467 of the Indian Penal Code is made out. Any alienation of suit property during pendency of suit is hit by lis pendens. Any sale deed executed during injunction period is null and void. The petitioners are not the parties in the civil suit. As such, the order of restrain passed by the civil court is not binding upon the petitioners and even otherwise sale and purchase of suit property do not constitute any criminal offence. Such sale deeds are void and inoperative but no criminal offence is made



out. The party to the suit who has violated the order of injunction can be proceeded for violation of injunction order.

8. Moreover, the petitioners are not purchasers from complainant. A purchaser cannot get a better title than that of the vendor. In similar nature of case, the Apex Court in ***Md. Ibrahim & Sons Vs. State of Bihar and Anr.*** reported in **2009 (4) PLJR (SC) 99** has held that no case of forgery is made out and such disputes are purely of civil nature. Paragraph-12 of the said judgment reads follows:-

“ 12. The sale deeds executed by the appellant, clearly and obviously do not fall under the second and third categories of ‘false documents’. It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the document with the intention of taking possession of complainant’s land (and that accused 2 to 5 as the purchaser, witness, scribe and stamp vendor colluded with first accused in execution and registration of the said sale deeds) would bring the case under the first category. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner’s behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of ‘false documents’, it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorized by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what



is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted.”

9. In facts and circumstances of present case and in view of law laid down by Apex Court, continuance of present proceedings against petitioners will amount to abuse of process of court and to secure ends of justice order taking cognizance dated 23.08.2013 passed by Judicial Magistrate, Ist Class, Sheohar, passed in Complaint Case No. C-1/76 of 2013 under Section 467 and 120B of the Indian Penal Code as well as whole proceeding arising out of said Complaint Case as far as same relates to petitioners is quashed.

10. The petition stands allowed.

**(S. Kumar, J)**

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