

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.23848 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- BEGUSARAI

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1. P.S.Veena @ Prasad Singh Veena @ Meena Singh W/O Late Shashi Bhushan Singh At Present Residing C/O Suresh Prasad Singh (Landlord), Village- Pachamba, Ward No. 20, Near Old Post Office, P.S- Begusarai, District- Begusarai, Permanent Resident Of Village- Post Office- Manda, Via- Narhan, P.S- Vibhubipur, District- Samastipur.
 2. Pushpa Sing @ Guddi W/O Sri Ravin Sing At Present Sharda Nagar, Kanpur, House No. 17/376, Q- Block, P.S- Kanpur, District- Kanpur, Uttar Pradesh (U.P), Permanent Address- Nauladih, P.S- Bhagwanpur, District- Begusarai.
 3. Anju Rai W/O Yogesh Roy Resident Of Sharda Nagar, House No. 458/ Q Block, Indrapuri Kanpur, P.S And District- Kanpur U.P
 4. Ravi Singh Ram Nihora Singh Resident Of Village And Post- Nauladih, P.S- Bhagwanpur, District- Begusarai, Present And Permanent Address- Sharda Nagar, House No. 117/376, Q Block Post, P.S And Distt- Kanpur, State- Uttar Pradesh

.... Petitioner/s

Versus

1. The State Of Bihar
2. Anjani Bhushan S/O Late Shashi Bhushan Singh Village- Manda, P.S- Bibhutipur, District- Samastipur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Amresh Kumar Verma
For the Opposite Party/s : Mr. Sanjay Kumar Singh,A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 10-07-2017

This application under Section 482 Cr.P.C. has been filed for quashing the order dated 08-08-2008 passed by the learned Judicial Magistrate, 1st Class, Begusarai, in Complaint Case No. 585c/2008 by which the learned Magistrate has, after enquiry, found prima facie case for the offences under Sections 418, 419 and 465 of the Indian Penal Code against the petitioners.

2. Learned counsel for the petitioners has submitted that Title Partition Suit No. 84 of 2008 is already pending between the parties for setting aside the sale deed executed by petitioner no.2 in favour of Lalita Devi, which is



alleged to have been executed illegally by committing fraud. It has further been submitted that Succession Certificate has been granted in Succession Certificate Case No. 15 of 2004 in favour of the petitioners on the basis of no objection filed by the complainant. In Title Suit No. 84 of 2008 filed by the complainant, the petitioners have been made as defendants and they have already appeared in the Suit and contesting the suit.

Learned counsel for the petitioners has submitted that the proceeding in respect of one of the accused Lalita Devi in whose favour sale deed was executed by Pushpa Singh has already been quashed by a co-ordinate Bench of this Court on 02.02.2011 in Cr. Misc. No. 5094 of 2009. The dispute is totally civil in nature and there is no ingredient of the offence under Sections 418, 419 and 465 IPC.

Learned counsel for opposite party no.2 has appeared and submitted that the defence of the petitioners cannot be taken into account. It has further been submitted that the defence, taken by the petitioners, mentioned in the instant petition, are the main allegation against them in the complaint petition. Counsel for opposite party no.2 has further submitted that Lalita Devi was the vendee whereas petitioner no.2 is the vendor of the property and has committed fraud in conspiracy with others.

Learned A.P.P. has appeared and submitted that there is no illegality in the impugned order.

The prosecution story, in short, is that the father of the complainant performed three marriages. From the first wife- Mundrika Devi, there was no issue and thereafter he performed second marriage with Smt. Meena Singh (Petitioner no.1) and from that marriage there were two daughters, namely, Pushpa Singh and Anju Rai, petitioner nos.2 and 3. Since no male issue was



born, late Shashi Bhushan Singh performed third marriage with Indira Devi and he was blessed with three sons, namely, Anjani Bhushan, (complainant), Tirupati Bhushan and Shri Niwas Bhushan. Mundrika Devi with the consent of her husband accepted the complainant as adopted son. The complainant and his brothers at that time were minors and used to stay in the house of Pushpa Singh. It is alleged that Pushpa Singh under conspiracy took away the papers and the pass book of the bank with regard to movable and immovable property and under conspiracy executed a sale deed in favour of Lalita Devi, accused no.5 for sale of the building purchased by Mundrika Devi by two sale deeds, showing herself the daughter of Mundrika Devi. It is alleged that Pushpa Singh executed the sale deed in favour of Lalita Devi by mis-representation. Mundrika Devi had died issueless. It has further been alleged that in Succession Case no. 15 of 2004 affidavit has been filed by her to grab the property.

The learned Magistrate after recording S.A. of complainant and the statement of the three witnesses has found, prima facie, case against the petitioners under Sections 418, 419 and 465 of the Indian Penal Code.

From the facts of this case it appears that it is admitted position that petitioner no.2 was the daughter of Mundrika Devi (step mother). Shashi Bhushan Singh was the common ancestor. Therefore property was the joint property and after the death of Shashi Bhusan Singh Succession case was filed bearing Succession Case No. 15 of 2004 wherein the complainant has appeared and filed no objection with verification on 28.06.2004 jointly with Pushpa Singh, Anju Rai and Tirupati Bhushan. Certified copy of no objection has been annexed in this petition. It is also admitted position that the complainant has filed Title Partition Suit No. 84 of 2008 in which the petitioners are also the defendants wherein one of the reliefs is to declare the various sale deeds as mentioned in the



plaint null and void besides relief for partition of Schedule II and III property as mentioned in the plaint.

Learned counsel for the petitioners has relied upon a decision of the Supreme Court in the case of *Md. Ibrahim & ors –v- State of Bihar & anr, reported in 2009(4)PLJR (SC) 99* wherein the Hon'ble Supreme Court has held that there is growing tendency of complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurize parties to settle civil dispute.

Proceeding against one of the accused Lalita Devi has already been quashed vide order dated 02.02.2011 in Cr. Misc. No. 5094 of 2009.

The Hon'ble Supreme Court in the case of *State of Haryana & ors –v- Bhajan Lal & ors, reported in 1992 Supp (1) Supreme Court Cases 335* has held that where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, then proceeding will be quashed.

As per own statement made in the complaint petition, Succession Case was filed in the year 2004 and no objection on behalf of the complainant was filed in that case in the year 2004, on the basis of that, Succession Certificate was granted by the Court in favour of the petitioners. Thereafter the compliant case has been filed in the year 2008 after about four years. Therefore, this Court is of the view that continuation of criminal proceeding against the petitioners is abuse of process of law. Accordingly, the impugned order dated 08.08.2008



passed by the learned Judicial Magistrate, 1st Class, Begusarai in Complaint Case No. 585c of 2008 along with entire criminal proceedings against the petitioners is hereby quashed.

This application, therefore, stands allowed.

(Sanjay Priya, J)

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CAV DATE	
Uploading Date	20/07/2017
Transmission Date	20/07/2017

