

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.32444 of 2011

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1. Uday Kumar Singh S/O Late Shyam Bihari Singh Resident Of Village- Tarwa, P.O.- Suetha, P.S.- Parsa Bazar, District- Patna
 2. Abhay Kumar Singh S/O Late Shyam Bihari Singh Resident Of Village- Tarwa, P.O.- Suetha, P.S.- Parsa Bazar, District- Patna
 3. Dhiraj Kumar Singh @ Shipu Singh S/O Late Ashok Kumar Sinha Resident Of Village- Tarwa, P.O.- Suetha, P.S.- Parsa Bazar, District- Patna
 4. Gouri Shankar Singh S/O Late Lala Singh Resident Of Village- Makhdumpur, P.S.- Karai(Hilsa), District- Nalanda
 5. Shailendra Singh S/O Late Chandra Gupta Singh Resident Of Village- Parthu, P.S.- Pipra, District- Patna

.... Petitioners

Versus

1. The State of Bihar
2. Ravi Shankar Singh @ Munna Singh S/O Sri Ajay Kumar Singh Resident of Village- Tarwa, P.S.- Parsa Bazar, District- Patna

.... Opposite Parties

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Appearance :

For the Petitioners	:	Mr. D.K.Sinha, Sr. Advocate
For the Opposite Party No.2	:	Mr. Y.C.Verma, Sr. Advocate
For the State	:	Mr. Akhileshwar Dayal, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 07-09-2017

This application under Section 482 of the Cr.P.C. has been filed to quash the order dated 02.08.2011 passed by Judicial Magistrate, Patna in Complaint Case No.2207(C) of 2010 whereby and whereunder the learned Magistrate finding prima-facie case for the offence under Section 420, 465, 468, 467, 469, 471 and 120B of the IPC ordered for issuance of summons against the petitioners.

2. The Opposite Party No.2 filed a complaint case no.2207 of 2010 on the file of CJM, Patna alleging inter-alia that as per family partition held in the year 1976 the ancestor of the complaint and petitioners got share in the landed property separately and they were



coming in peaceful possession of their respective lands. The petitioners had greedy eyes over the property allotted to one of the co-sharer, namely, Most. Bund Kuer who had transferred her property in favour of the complainant (Opposite Party No.2). The petitioners in order to grab the property of said Bund Kuer fraudulently created a document of agreement for sale dated 29.01.2004 purported to be executed by Bund Kuer in favour of the petitioners. It has been further alleged that the petitioners on the basis of said forged fabricated deed of agreement filed a Title Suit No.326 of 2004 for specific performance of contract which after trial was dismissed on 24.05.2010. After dismissal of said suit, the Opposite Party No.2 filed the present complaint case in which the learned court below took cognizance for the offence under sections 420, 465, 468, 467, 469, 471 and 120B of the IPC against the petitioners.

3. The learned counsel for the petitioners submits that the dispute between the parties is purely a civil dispute. The deed of agreement was duly executed by Bund Kuer in favour of the petitioners. The petitioners had filed Title Suit which was dismissed. The petitioners have already filed a Title Appeal against the said judgment which is presently pending before the High Court. The allegation of committing fraud, forgery and cheating is omnibus and on account of pendency of civil appeal before this Court, the criminal prosecution of these petitioners is bad in law. The learned Magistrate



has passed the impugned order without applying judicial mind and so the order is fit to be quashed.

4. The learned counsel for the Opposite Party No.2 as well as APP opposed the submission. It has been submitted that the deed of agreement was fraudulently prepared by the petitioners by forging the signature of Bund Kuer in order to grab the landed property of Bund Kuer given in family partition. The learned Magistrate finding prima-facie case against the petitioners has rightly taken cognizance and no interference is required in the impugned order.

5. On perusal of complaint petition and the counter affidavit filed on behalf of the Opposite Party No.2, it appears that specific allegation against these petitioners is that they in order to grab the landed property of Bund Kuer has fraudulently prepared a deed of agreement and filed a Title Suit No.326 of 2004 before the Court of Sub-Judge, Patna. The said Bund Kuer is an old lady and she contested the said case. The said title suit has been dismissed by Sub-Judge-III, Patna on 24.05.2010. The Court of Sub-Judge has disbelieved the genuineness the deed of agreement dated 29.01.2004. The trial Judge framed the issues in order to ascertain the genuineness the deed of agreement dated 29.01.2004 and while deciding the issue the learned Sub-Judge-III, Patna at para-7 of the judgment has held as follows:-

“I am of the opinion that the defendant (Bund Kuer) has not executed baibeyana deed dated 29.01.2004 in



favour of the plaintiffs in respect of the suit properties as described on Schedule-II of the plaint on receipt of Rs.14 lacs and the baibeyana deed dated 29.01.2004 is forged and fabricated one. Hence these two issues i.e. Issue No.VI and Issue No.VIII are decided against the plaintiffs.”

6. In the said title suit the said Bund Kuer has denied the allegation of executing any deed of agreement in favour of these petitioners and receipt of any consideration money for executing any sale deed in their favour and it has been held that the petitioners have committed forgery in getting the agreement prepared. In such circumstance, the court below has rightly taken cognizance against the petitioners.

7. In view of above discussions I am of the view that after recording of finding of civil court as regards the deed of agreement as forged and fabricated, the criminal prosecution of these petitioners cannot be said to be bad in law. The present criminal miscellaneous application is devoid of merit and is accordingly dismissed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	13.09.2017
Transmission Date	13.09.2017

