

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.44071 of 2011

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

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1. Vijay Kumar Singh, S/O Late Ram Lagan Singh, Resident of D/41, Police Colony, Anisabad, P.S.- Gardanibagh, Distt.- Patna.
 2. Abhay Kumar Singh, S/O Late Dharmnath Singh, R/V- Khagri Road No.-3, Takiyapur, P.S.- Danapur, Distt.- Patna

.... Petitioners

Versus

The State Of Bihar

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Vijay Kumar Sinha, Advocate

For the Opposite Party/s : Mr. Maya Nand Jha (APP)

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

Date: 23-11-2017

Heard the learned counsel for the petitioners, learned

A.P.P. for the State and learned counsel for the opposite party

no.2.

This criminal miscellaneous has been filed for quashing the order dated 15.06.2010 passed by Sri Ranjan Kumar, J.M. 1st Class, Danapur in connection with Complaint Case No. 302(C) of 2010, whereby and whereunder cognizance has been taken for the offences under Sections 420, 467, 468 and 469 of the Indian Penal Code and it was ordered to issue summon against the petitioners and others for facing trial.



The opposite party no.2 filed Complaint Case No. 302 (C) of 2010 in the Court of learned A.C.J.M., Danapur, stating, inter alia, therein that on 26.03.2010 the complainant went to Circle Officer, Danapur with Gopal Prasad and obtained certified copy of Mutation Case No. 742/7/2009-10 and after going through the certified copy, the complainant came to know that a land which was purchased in the name of Anuradha Devi, the wife of the complainant, dated 26.07.1993, bearing Khata No. 257, Survey Plot No. 1687, Part area 1000 sft. was sold to Meena Devi by the accused Vijay Kumar Singh at the instance of Abhay Kumar Singh on 11.07.2009 whose witnesses are Manoj Kumar and Rajendra Prasad and on the petition filed by Meena Devi for mutation in the Circle Office, Danapur, Gopal Prasad received the notice and he appeared in the Court of the Circle Officer, Danapur and he filed objection petition but one Clerk Krishna Prasad did not receive the objection petition and then Gopal Prasad filed his objection petition before the Circle Officer, Danapur and the next date was fixed on 17.12.2009. The certified copy was supplied to him on 26.03.2010 and then he came to know that Circle Officer, Danapur mutated the land in favour Meena Devi being in collusion and conspiracy with other staff and the accused person. The complainant was ready to file the



appeal before the court of the D.C.L.R., Danapur against the said order and filed the instant complaint case. the complainant was examined on solemn affirmation and three witnesses were examined during inquiry namely, Vivek Kumar Sinha, Gopal Prasad and Navin Kumar Sinha and thereafter the learned court below passed the impugned order.

On behalf of petitioners it is submitted that the learned court below has not applied the judicial mind at the time of passing the impugned order. From the complaint petition itself it appears that no criminal offence is made out. It is purely a revenue dispute. The complainant ought to have filed appeal against the order of the Circle Officer, Danapur. No offence as alleged is made out, but the learned Magistrate ignoring all these fact passed the impugned order. As a matter of fact, Gopal Prasad was the Secretary of Adarsh Sahkari Grih Nirman Samiti, then, the said Co-operative Society was superseded by the District Co-operative Officer, Patna and the administrator was appointed and the society was superseded and one Raj Kumar Gupta has filed a petition before the court of the District Co-operative Officer, Patna vide Miscellaneous Case No. 192 of 2000 and the order was passed by the District Co-operative Officer, Patna on 07.06.2001 stating that the election of Board of Directors of



Adarsh Sahkari Grih Nirman Samiti will be held and the administrator was directed to cancel the allotment of the land made by Gopal Prasad the Ex-Secretary and to take legal action for cancellation of the registry made by Gopal Prasad the Ex-Secretary of the said society which is apparent from the order dated 07.06.2001 passed by the District Co-operative Officer, Patna. After the order dated 07.06.2001, the election of the society was made and the petitioner Vijay Kumar Singh was elected as a Vice-President of Adarsh Sahkari Grih Nirman Samiti and Abhay Kumar Singh was elected as President. Several letters were issued for handing over the charge of the ledger and document related with Adarsh Sahkari Grih Nirman Samiti. Letter was also issued to Gopal Prasad the Ex-Secretary of the said society to hand over the charge of the ledger and document related with the said society and when the charges were not handed over to the society by Mrs. Sarojani Sinha, the Member-cum-Secretary Mr. Gopal Prasad the Ex-Secretary-cum-President of the said society thereafter the notice was published in the *Prabhat Khabar* Newspaper on 05.11.2006 with the signature of the President and Secretary of the said society stating that the Ex-President and secretary have not handed over the charge and so the members of the said society were requested to



come in the office of the said society for registration of their land otherwise their allotment will be cancelled. Thereafter, one Meena Devi, the member of the said society came before the President and filed her application with the money receipt given to her by the society requesting for registry of the land in her favour which was allotted to her vide plot no. A/1 by her written petition dated 08.07.2009 and thereafter the President scrutinized the file of Meena Devi and recommended for registration of the land by his order dated 08.07.2009 and when the recommendation was made, the land was registered in the name of Meena Devi on 11.07.2009 and the petitioners being Vice President and President took their signature on the sale deed as a vender jointly and when the land was registered in the name of Meena Devi then she filed a petition before the Circle Officer, Danapur for mutation of the land on 18.08.2009 and report was called for by the Karamchari and thereafter the notice was issued to Gopal Prasad the Ex-Secretary and Vice Secretary of the society by the Circle Officer, Danapur and after that the order was passed on 17.11.2009 and the land was mutated in the name of Meena Devi and thereafter a *sudhi-patra* was issued in the name of Meena Devi on 01.02.2010.

From perusal of sale deed dated 26.07.1993 it reveals



that Jai Prakash the Ex-Secretary of the said society has registered the land in the name of Anuradha Devi when the society was already superseded and the administrator was already appointed for looking after the affairs of the matter of the society and so Mr. Jai Prakash Singh has got no legal power to register the land in the name of Smt. Anuradha Devi the wife of the complainant. The complaint petition has been filed by the complainant after concealing all these facts. Abhay Kumar Singh and Vijay Kumar Singh the petitioners have registered the land in the capacity of the Vice President and President of the said society which is apparent from the sale deed dated 11.07.2009. The dispute appears purely of civil nature but in spite of that cognizance has been taken which is misuse of the process of the Court and, as such, the same is fit to be quashed.

The learned A.P.P. and learned counsel for the opposite party no.2 submit that the wife of opposite party no. 2 has purchased the land on 26.07.1993 from Jai Prakash Singh and the wife of the complainant is in possession over the said land, the house has been constructed and all the family members are residing in the said house. The Circle Officer, Danapur being in collusion and conspiracy and after suppressing the objection filed mutated the name of Meena Devi and, as such, the order passed



by the learned Magistrate is quite correct proper and legal and there is no need of any interference by this Court.

Having considered the submissions urged at the Bar going through the record and considering the compliant petition, the statement of the complainant on solemn affirmation and statement of inquiry witnesses, it is manifest that the dispute appears purely of civil nature. The complainant instead of filing the complaint ought to have filed appeal before the D.C.L.R. against the order of Circle Officer, Danapur whereby and whereunder the name of Meena Devi was mutated but the complaint petition has been filed making all of them as accused which is misuse of the process of the Court. The petitioner no.2 has been granted anticipatory bail vide A.B.P. No. 2682 of 2011 and the petitioner no.1 was granted pre-arrest bail vide Cr. Misc. No. 29609 of 2011, whereas Shiv Ranjan, the Circle Officer, has been allowed pre-arrest bail vide A.B.P. No. 2693 of 2011. It has become common practice to file complaint case instead of taking proper remedy in filing the appeal against mutation order. No proper relief can be granted in complaint case rather the proper remedy lies in filing the appeal but only with a view to harass the persons concerned complaint case has been filed and, as such, the impugned order dated 15.06.2010 passed by Sri Ranjan Kumar,



J.M. 1st Class, Danapur in connection with Complaint Case No. 302(C) of 2010 is hereby quashed and this criminal miscellaneous stands allowed.

(Jitendra Mohan Sharma, J.)

Rajiv/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	27.11.2017
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