

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.19943 of 2011

Arising Out of Complaint Case No. -1540 Year- 2005 Thana -Town District- VAISHALI
(HAJIPUR)

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1. Shiv Kumar Singh S/o Late Bhagdeo Singh "Yogi" Ex Secretary Tapeswar Singh Sahkari Grih Nirman Sahyog Samiti Limited R/o Vill.- Chak Fatach, P.S. Jandaha, Distt. -Vaishali
 2. Santosh Kumar Singh, S/o Rajendra Singh R/o Vill. + P.O. Khoji, P.S. -Jandaha, Distt. -Vaishali
 3. Indra Nath Singh S/o Ramphal Singh, R/o Vill.-Harpur, P.S.- Mahua, Distt.-Vaishali
 4. Dina Nath Singh "D.N. Singh" S/o Late Ram Chandra Singh, R/o Vill.- Pokhra Veer Kunwar Singh Colony, Hajipur, P.S.- Hajipur Town, Distt. -Vaishali
 5. Arun Kumar Singh S/o Dwarika Singh, R/o Veer Kunwar Singh Colony, Hajipur, P.S.- Hajipur Town, Distt.-Vaishali
 6. Ramesh Kumar Rai, S/o Jagannath Rai R/o Vill. -Manjhuli, P.S.- Bidupur, Distt.-Vaishali

.... Petitioners

Versus

1. The State of Bihar
2. Manoj Kumar Gupta S/o Satya Narain Sah R/o Vill.- Chauhatta Chip Tola, Hazipur, P.S. -Hazipur Town, Distt.- Vaishali

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Shiv Shankar Sharma, Advocate
Mr. Arun Kumar Singh, Advocate
For the Opposite Party no.2 : Mr. Binod Kumar, Advocate
Mr. Ram Kishun Prasad, Advocate
For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 30-11-2017



Heard learned counsel for the petitioners and learned counsel appearing for the complainant-opposite party no.2.

2. This application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed by the petitioners for quashing the order dated 02.04.2009 passed by the learned Judicial Magistrate-1st Class, Hajipur in Complaint Case No.1540 of 2005 by which the petitioners have been summoned to face trial for the offences punishable under Sections 465, 467, 468, 420 and 120-B of the Indian Penal Code.

3. The case of the complainant-opposite party no.2 in brief is that he along with his two brothers namely, Lalan Gupta and Vijay Kumar own and possess plot no.1029 under khata no.553 in Hajipur town. All the three brothers sold 2 kathas and 16 dhoors of land to accused Dinanath Singh vide two sale deeds executed on 04.03.1992. On 29.07.1994, the brother of the complainant namely Vijay Kumar sold 1 katha 8 dhoors of land to accused Dinanath Singh vide another sale deed, which was purchased by him in the name of Tapeswar Singh Cooperative Housing Society Limited (for short 'Society'). The said society has been formed by the accused Dinanath Singh for the purpose of extending benefits to his close relatives. The accused Indra Nath Singh is the President of the Society, the accused Shiv Kumar Singh was its previous Secretary,



the accused Santosh Kumar Singh is its present Secretary, the accused Arun Kumar Singh is its Vice-president and the accused Dinanath Singh is the main person who runs the society.

4. It is alleged that by the aforestated three registered deeds, the accused Dinanath Singh purchased 4 kathas and 4 dhoors lands, which is equivalent to 7900 square feet, either in his own name or in the name of the society. However, on 04.03.1992, he sold 7092 square feet land by way of two separate registered sale deeds in the name of accused Ramesh Kumar Rai and his brother Umesh Kumar Rai and the remaining land was shown as road. Thereafter, the accused persons in order to cheat the complainant, in conspiracy with each other, deliberately got a sale deed executed for 3795 square feet land by the accused Santosh Kumar Singh in the name of Ramesh Kumar Rai and the accused Arun Kumar Singh and Shiv Shankar Rai became its witness. The aforesaid sale deed was executed on 18.05.2005 in order to cause wrongful loss to the complainant and his brothers by the accused persons for a corresponding wrongful gain to themselves as they were fully aware of the fact that the land transferred by sale deed dated 18.05.2005 was owned and possessed by the complainant and his brothers.

5. It is submitted by the learned counsel for the petitioners that after holding inquiry in exercise of powers conferred



under Section 202 of the Cr. P.C. the learned Magistrate vide order dated 07.12.2005 dismissed the complaint in exercise of powers under Section 203 of the Cr.P.C., which was challenged by the complainant by preferring a revision application vide Criminal Revision No.37 of 2006 in the court of Sessions Judge, Vaishali, which was allowed on 6th of June, 2008 by the learned Fast Track Court No.III, Vaishali. By the order dated 6th June, 2008, the revisional court set aside the order passed by the learned Magistrate and directed him to conduct further inquiry into the matter and pass order afresh. It is submitted that the order was passed by the revisional court even without issuing any notice to the petitioners and without giving them any opportunity of being heard. He submitted that though the revisional order was not challenged by the petitioners, the order passed by the learned Magistrate is patently bad for the reason that after the matter was remitted back, the learned Magistrate summoned the petitioners to face trial without holding any further inquiry.

6. On the other hand, learned counsel appearing for the complainant submitted that it is not true that no inquiry was conducted into the matter. He contended that it would be apparent from the impugned order passed by the learned Magistrate that the summoning order against the petitioners was passed after taking into



consideration the statement made by the complainant on oath and the statements of three inquiry witnesses examined on behalf of the complainant.

7. I have heard learned counsel for the parties and perused the record.

8. I find force in the submissions made by the learned counsel for the petitioners.

9. It would be manifest from the record that after the matter was remitted back to the court of Magistrate, the learned Magistrate made several adjournments but no witness was produced on behalf of the complainant. The learned Magistrate did not hold inquiry by any other mode and, ultimately, on the basis of the materials already on record from before, passed the impugned order on 02.04.2009. It is true that in impugned order there is reference to statement of the complainant made on oath and to the statements of three witnesses recorded in course of inquiry conducted under Section 202 of the Cr.P.C., but those statements were taken prior to the order passed by the revisional court whereby the earlier order passed by the learned Magistrate dismissing the complaint was set aside. As per the order passed by the revisional court, the learned Magistrate was required to conduct further inquiry into the matter and pass order in accordance with law. However, the learned



Magistrate completely failed to appreciate the order passed by the revisional court and after the matter was remanded back, even without holding any further inquiry, he summoned the petitioners.

10. It has rightly been submitted by the learned counsel for the petitioners that even the revisional court did not issue notice to the petitioners before setting aside the order passed by the learned Magistrate dismissing the complaint in exercise of powers conferred under Section 203 of the Cr.P.C. It is well settled by now that no order in exercise of power to revision can be made by the revisional court to the prejudice of the accused unless he had an opportunity of being heard either personally or by pleader in his own defence, the revisional court did not issue any notice to the petitioners before setting aside the order passed by the Magistrate. However, since the petitioners failed to challenge the revisional order, the same has attained finality and no objection can be raised in this regard now.

11. In view of the discussions made above, the impugned order dated 02.04.2009 passed by the learned Judicial Magistrate-1st Class, Vaishali at Hajipur in Complaint Case No.1540 of 2005 is set aside.

12. The application stands allowed to the extent indicated above.



13. The matter is remitted back to the learned Judicial Magistrate-1st Class, Vaishali at Hajipur to hold further inquiry into the matter and to pass appropriate orders in accordance with law afresh.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
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