

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.28295 of 2016

Arising Out of PS.Case No. -314 Year- 2013 Thana -SHEKHPURA District- SEKHPURA

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Sheo Naresh Prasad S/o Late Nageshwar Singh Resident of Village- Gabai, P.s.-
Sheikhpura, District- Sheikhpura.

.... Petitioner

Versus

1. The State of Bihar.
2. Birendra Prasad Pandey S/o Late Devi Prasad Pandey R/o Village Gabai, PS
and District- Sheikhpura.

.... Opposite Parties.

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Appearance :

For the Petitioner/s	:	Mr. Anjani Prasad Singh, Advocate
For the State	:	Mr. Indihar Kumari, APP
For O.P. No. 2	:	Mr. Hemant Kumar Karn, Advocate
		Mr. Pramod Kumar Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 03-07-2017

Heard learned counsel for the petitioner, learned
Additional Public Prosecutor for the State and learned counsel for
opposite party no. 2.

2. This application under Section 482 of the Code
of Criminal Procedure has been filed by the petitioner for quashing
the order dated 21.05.2016 passed by the learned Chief Judicial
Magistrate, Sheikhpura in G. R. NO. 956 of 2013, arising out of
Sheikhpura P. S. Case No. 314 of 2013 whereby the application
filed under Section 239 of the Code of Criminal Procedure seeking
discharge from the case has been rejected.



3. The first information report of the aforesaid Sheikhpura P. S. Case No. 314 of 2013 is based on a Complaint Case No. 304C/2013 dated 25.07.2013 instituted by one Birendra Pandey which was referred to the police by the learned Chief Judicial Magistrate, Sheikhpura in exercise of power conferred under sub-section (3) of Section 156 of the Code of Criminal Procedure for investigation. The first information report was registered under Sections 420, 467, 468, 471 and 120-B of the Indian Penal Code on 03.10.2013.

4. The allegations made in the complaint by the complainant Birendra Pandey is that his wife Krishna Kumari Devi inherited certain landed property from her parents in village Gawai, Police Station and District-Sheikhpura. He stated that one Nago Ram takes care of her property. Since his wife, who is an illiterate lady, needed money for her treatment, she asked Nago Ram to negotiate for sale of five decimal of land. It is stated that in presence of said Nago Ram and Krishna Kumari Devi, the petitioner agreed to purchase the land bearing Khesra No.2997, Khata No. 591 admeasuring five decimal for a consideration of Rs.60,000/- On 16.07.2013, Krishna Kumari Devi went to registration office for execution of sale deed. The deed writer prepared the deed on which Krishna Kumari Devi put her thumb impression even without the knowledge of its contents. She was



assured that payment would be made after registration of the deed. Krishna Kumari Devi came back to her village-Gawai after executing the deed. Later on, on 20.07.2013, when the complainant along with his wife came to village- Gawai, he came to know that the petitioner got 2.74 acres of land registered in his name instead of five decimal land by playing fraud and even without paying the consideration amount.

5. On completion of investigation, the police submitted charge-sheet against the petitioner pursuant to which cognizance was taken under Sections 420, 467, 468 and 471 of the Indian Penal Code and the petitioner was summoned to face trial.

6. At the stage of trial, an application under Section 239 of the Code of Criminal Procedure was filed on behalf of the petitioner seeking discharge. The learned Chief Judicial Magistrate, Sheikhpura dismissed the said application vide order dated 21.05.2016, which is under challenge in the present application.

7. Learned counsel for the petitioner submitted that there is no truth behind the allegation made in the complaint. He submitted that even in course of investigation, witnesses did not support the allegations made in the complaint, but merely on the basis of opinion of supervising officer, charge-sheet has been submitted against the petitioner. He submitted that upon



consideration of the document submitted therewith, it appears that there is no sufficient material to proceed against the petitioner in the present case. He submitted that if a document is registered it carries a presumption of proper execution as also the contents thereof. He contended that no ingredient of the offence under which cognizance has been taken is attracted.

8. On the other hand, learned counsel appearing on behalf of opposite party no. 2 submitted that investigation conducted by the investigating officer was collusive in nature and, thus, a complaint was made before the Superintendent of Police and the Superintendent of Police in his supervision note found the allegation made against the petitioner to be true. He submitted that the presumption in case of document is rebuttable presumption and since there is specific allegation against the petitioner that he cheated the wife of the informant of the present case by getting executed 2.74 acres of land in place of five decimal land, the ingredients of the offence are clearly attracted.

9. Learned Additional Public Prosecutor for the State has adopted the submissions made by the learned counsel for opposite party no. 2. She submitted that the defence of the accused cannot be a ground for quashing of a bona fide prosecution. She also contended that there is no fetter in proceeding with a criminal case even if a civil dispute is also made out.



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

11. From the pleading of the parties, it is manifest that there is no dispute to the fact that the wife of opposite party no. 2 had executed sale deed in favour of petitioner before the registration authority in Sheikhpura Registry Office on 16.07.2013. The allegation, which is being made by the informant is that since his wife is an illiterate lady, she failed to notice that instead of five decimal of land, the document was prepared for 2.74 acres of land. In this regard, I find substance in the argument of learned counsel for the petitioner that if a document is registered, it carries a presumption of proper execution, as also the contents thereof. There is presumption that a registered document is validly executed.

12. In ***Prem Singh & Ors vs. Birbal & Ors [(2006) 5 SCC 353]***, the Supreme Court observed: “...*There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption... .*”

13. Thus, if a deed was executed by the wife of the informant under some misconception of fact, she has the option to file a suit for cancellation of deed which, according to her, is



outcome of undue misrepresentation. Unless such misrepresentation or fraud is established in a properly instituted suit, in the opinion of this Court, the prosecution of the purchaser of property in a criminal case would be a gross abuse of the process of the court.

14. In that view of the matter, the order dated 21.05.2016 passed by learned Chief Judicial Magistrate, Sheikhpura in G. R. NO. 956 of 2013, arising out of Sheikhpura P. S. Case No. 314 of 2013 is quashed.

15. The application stands allowed.

16. It is made clear that in case a civil suit is filed and the informant succeeds in establishing fraud or misrepresentation against the petitioner, it would be open for him to institute criminal case against the petitioner and, in that circumstance, there would be no issue of criminal prosecution being barred by law of limitation, as cause of action would arise from the date on which fraud or misrepresentation is established in the civil suit.

(Ashwani Kumar Singh, J.)

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