

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.7744 of 2012

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

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1. Md. Shoin @ Md. Shohin S/O Late Seikh Hasim Resident of Village Pithna, P.S. Goradih, Distt. Bhagalpur.

2. Soleha Begum @ Bibi Saleha W/O Md. Shoin @ Md. Shohin Resident of Village Pithna, P.S. Goradih, Distt. Bhagalpur.

.... Petitioners

Versus

1. The State of Bihar.

2. Seikh Moin @ Md. Moinuddin S/O Late Seikh Hasim Resident of Village Pithna, P.S. Goradih, Distt. Bhagalpur.

.... Opposite Parties

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Appearance :

For the Petitioners	:	Mr. Ranjan Kumar Jha, Advocate
		Mr. Mritunjai Kumar Mishra, Advocate
For O.P. No.2	:	Mr. Devendra Kumar Pandey, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 27-04-2017

The petitioners have preferred this quashing petition against the order dated 17.1.2012 passed by Sri Rajeev Kumar, Judicial Magistrate, Ist Class, Bhagalpur in Complaint Case No.1300 of 2010 whereby he has taken cognizance of the offence under Sections 420, 406, 323, 504/34 of the Indian Penal code.

2. A brief fact giving rise to this case is that a Complaint Case No.1300 of 2010 was filed by Seikh Moin @ Md. Moinuddin, opposite party no.2 against the petitioners Md. Shoin @ Shohin, own brother of the complainant. The allegation in the complaint petition is that his brother Shoin coming into conspiracy



with the Revenue Authority of the circle office got an order in his favour in Mutation Case No.647/99-2000 on the basis of oral Hibba and his wife name is recorded in the Register-II with respect to the land belonging to complainant's father. Further allegation is that there was no such oral Hibba done in favour of accused persons.

3. Learned counsel appearing on behalf of the petitioners submits that the land in question was earlier recorded in the name of Seikh Hashim, who by way of Hibba, gifted this land to Bibi Saleha, wife of Md. Shoin, who is his daughter-in-law and on that very basis, mutation was made in her name. Against the order of mutation case the complainant-opposite party no.2 also made appeal before the D.C.L.R. in Misc. Case No.2 of 2002, (Annexure-3 series) challenging the entry of the name of Bibi Saleha, in Register-II (Annexure-2) against the land in question but the same was again decided in favour of Bibi Saleha with a detailed reasoned order. Not only that the complainant got a title suit filed by his another brother Safiulla seeking partition with respect to the same land and filed Title Suit No.149 of 2002 and Sub Judge, Bhagalpur by judgment dated 22nd November, 2011 dismissed the suit on contest. Moreover, earlier the complainant with similar allegation had filed another complaint case which was sent to police under Section 156(3) of Cr.P.C. for registering F.I.R. and police, after investigation, finding the case false



submitted final form and accepted. Levelling of similar allegation, repeatedly criminal cases are being instituted in order to settle the civil dispute.

4. Learned counsel appearing on behalf of opposite party no.2 submits that the land was earlier in the name of father of the complainant but his brother, petitioner no.1 in conspiracy with Circle Officer, Muzaffarpur and Halka Karamchari got the name of his wife recorded vide Mutation Case No.647/99-2000 on the basis of false oral Hibba.

5. Having considered submissions advanced by both sides and on perusal of the record, it appears that the complainant-opposite party no.2 earlier had filed criminal case with similar nature of allegation against the petitioners. Vide Goradih Sabour P.s. Case No.118 of 2004 but the police finding the case false submitted final form. It also appears that a Title Suit No.149 of 2002 was filed by one of the brothers of the complainant claiming partition of the land in question, but the same was dismissed even the complainant filed objection in the court of D.C.L.R. against the mutation in favour of Bibi Saleha, but the same was also dismissed by order dated 7.9.2001 passed in Misc. Case No.7 of 2000-01 moreover the appeal preferred against this order was also dismissed in view of pending civil suit between the parties. Therefore, facts alleged in the complaint do not



make out a case of cheating, breach of trust and other alleged offences rather dispute between parties are of civil nature; so finding no prima facie case being made out under Sections 420, 406, 323 and 504/34 of I.P.C. the impugned cognizance order and subsequent criminal proceeding in the matter is set aside.

6. In the result, this petition is allowed.

(Arun Kumar, J)

N.H./-

AFR/NAFR	NAFR
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