

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.41393 of 2013

Arising Out of PS.Case No. -68 Year- 2013 Thana -AURANGABAD COMPLAINT CASE District-
AURANGABAD

- =====
1. Vivekanand, son of Devendra Sharma,
 2. Devendra Sharma, son of late Sukhdeo Singh,
 3. Fulendra Kumar Singh, son of late Sukhdeo Singh,
 4. Raghvendra Kumar, son of late Sukhdeo Singh,
 5. Ram Binay Singh, son of Ram Raj Singh, all resident of village + P.S. + P.O. - Pauthu, District - Aurangabad
 6. Sunil Pandey, son of Muneshwar Pandey, resident of Mohalla- Sri Krishna Nagar, P.S. + P.O. + District - Aurangabad

.... Petitioner/s

Versus

1. The State of Bihar
2. Manindra Sharma, son of Awadh Kishore Sharma, resident of Sri Krishna Nagar, P.S.-Aurangabad Nagar, District- Aurangabad.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Ramakant Sharma, Sr. Advocate with
Mr. Santosh Kumar Pandey, Advocate

For the Opposite Party No.1: Mr. Indra Kumar Singh, APP

For the Opposite Party No.2: Mr. Radha Krishna Singh, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 15-05-2017

1. This application under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 02.07.2013 passed by the Judicial Magistrate, 1st class, Aurangabad, in Complaint Case No.68 of 2013 by which the learned Magistrate has found *prima facie* case against the petitioners under Section(s) 417, 418, 465, 468/34 Indian Penal Code.

2. Heard learned counsel for the petitioners and the learned APP for the State as well as counsel for the Opposite Party No.2.

3. As per the Complaint Petition filed by the



complainant, petitioner No.1 claiming himself to be the adopted son of Nawal Kishore Sharma executed sale deed dated 29.11.2012 in favour of his own uncle Phulendra Kumar Singh and Raghvendra Kumar (Petitioner No.3 and 4) and Sunil Pandey (Petitioner No.6) as well as Ram Binay Singh (Petitioner No.5) were witness and identifier on the sale deed. Petitioner No.2 is natural father of petitioner No.1. The complainant alleged that the aforesaid land for which sale deed has been executed belonged to the father of the complainant in terms of the order passed by Permanent Lok Adalat in Pre Litigation Case No.81 of 2012.

4. Opposite Party No.2 has appeared and filed Counter Affidavit. Opposite Party No.2 has stated in the Counter Affidavit that claim of the petitioner No.1 to be adopted son of Nawal Kishore Sharma is totally false. After the death of Nawal Kishore Sharma, his wife Shanti Devi filed an application before the Circle Officer, Aurangabad, mentioning therein that after the death of her husband, she is living alone and wants dependent certificate. The Circle Officer, Aurangabad, after enquiry granted dependent certificate to Shanti Devi that she is alone after death of her husband and she has no issue. The aforesaid certificate dated 06.09.2007 granted to Shanti Devi has been enclosed as Annexure-A to the Counter Affidavit. It has further been submitted on behalf of the Opposite Party No.2 that Pre Litigation Case No.81 of 2012 was



filed in Permanent Lok Adalat, Aurangabad, by Reeta Kuer, wife of Rajendra Sharma against Bharat Sharma and Awadh Kishore Sharma for partition. By order dated 16.08.2012, both parties compromised and award was prepared for the entire property left by Raj Keshwar Singh. The award along with Compromise Petition has been annexed as Annexure-B series. It has further been submitted that Shanti Devi, wife of Nawal Kishore Sharma, was administered poison in her house in the night by the petitioner No.1 and 2 for which Aurangabad Town P.S. Case No.404 of 2010 was instituted under Section 302/34 Indian Penal Code in which cognizance has been taken against petitioner Nos.1 and 2 by the learned Chief Judicial Magistrate, Aurangabad, by order dated 02.11.2016. Aforesaid order has been annexed as Annexure-E to the supplementary Counter Affidavit filed by the Opposite Party No.2.

5. It has also been submitted on behalf of the Opposite Party No.2 that petitioner No.1 is claiming the property of Nawal Kishore Sharma as his adopted son, whereas, his father, Devendra Sharma, has obtained a deed of will of the aforesaid property, which shows that both are playing games and creating various documents to grab the property left by Nawal Kishore Sharma. An Informatory Petition was filed by the Opposite Party No.2 on 14.08.2008 before the Sub-Divisional Magistrate, Aurangabad, stating therein that Devendra Sharma and his family



members wanted to grab the property of Shanti Devi and for the same they may cause loss to the life and property of Shanti Devi. Xerox copy of the aforesaid petition dated 14.08.2008 has been annexed as Annexure-D to the Counter Affidavit. In this background, the sale deed dated 29.11.2012 executed by the petitioner No.1 in favour of Phulendra Kumar Singh and Raghvendra Kumar is totally forge and fabricated document and the Judicial Magistrate has legally found *prima facie* case against the accused persons (petitioners) by the impugned order. Title Suit No.212 of 2013 has also been filed by Opposite Party No.2 and his father for cancellation of the aforesaid sale deed dated 29.11.2012 executed by the petitioner No.1 in favour of petitioner Nos.3 and 4.

6. Opposite Party No.2 has further submitted that petitioner No.1 has executed the sale deed dated 29.11.2012 claiming himself to be the adopted son of Nawal Kishore Sharma, but such claim of the petitioner No.1 got falsified by Annexure-3, which is plaint of Title Suit No.409 of 2012 filed by the petitioner No.1 in the Court of the Sub-Judge 1st, Aurangabad, on 04.12.2012, to declare him the adopted son of late Nawal Kishore Sharma and his wife late Shanti Devi besides seeking other relief.

7. Counsel for the petitioner has submitted that this is a matter of civil dispute. Petitioner No.1 under *bonafide* requirement of money executed sale deed in favour of petitioner



Nos. 3 and 4 on 29.11.2012 and that particular land is exclusively in the share of father of petitioner No.1. The criminal Court has been put in motion by the complainant for putting pressure on the petitioners on altogether false allegation.

8. This Court in the case of *Ashfaq Ahmad Khan Vs. State of Bihar* reported in *2013(3) PLJR 493* has held that if the facts constitute a criminal offence as well as civil dispute, the criminal proceeding will continue, even if a person has filed a civil case that will not deprive him to file a criminal case. However, if the dispute is essentially of a civil nature and has been given cloak of criminal offence, the proceeding is an abuse of process of Court. There is a growing tendency in business circles/family dispute to convert purely a civil dispute in criminal case so as to settle the dispute quickly.

9. In the instant case, it appears that the dispute arose on account of execution of sale deed dated 29.11.2012 by petitioner No.1 in favour of petitioner Nos.3 and 4 claiming himself to be the adopted son of Nawal Kishore Sharma.

10. It is admitted case that Opposite Party No.2 has filed Title Suit No.212 of 2013 for cancellation of sale deed dated 29.11.2012 executed by the petitioner No.1 in favour of petitioner Nos.3 and 4 as mentioned in paragraph 6 of the Counter Affidavit filed on behalf of the Opposite Party No.2.



11. It is also admitted fact that petitioner No.1 has filed Title Suit No.409 of 2012 in the Court of the Sub Judge, 1st, Aurangabad, seeking relief to declare him to be adopted son of late Nawal Kishore Sharma and his late wife Shanti Devi and also for declaration that defendant Nos.1 to 5, which include the name of the complainant, have no right to disturb the complainant's possession over suit property detailed in Schedule-V of the plaint.

12. From the genealogical table given by the Opposite Party No.2 in para 4 of the Counter Affidavit, it appears that both the parties are co-sharers. From the allegation in the Complaint Petition, it is apparent that petitioner No.1 has executed sale deed in favour of his uncle Phulendra Kumar Singh and Raghvendra Kumar (Petitioner No.3 and 4) and petitioner No.5 and 6 are identifier and witness on the sale deed. As per the statement made in the Complaint Petition itself, the land, in question, came in possession of father of the complainant on the basis of compromise decree passed by Permanent Lok Adalat in Pre Litigation Case No.81 of 2012 filed by Reeta Kuer wife of Rajendra Sharma against Bharat Sharma and Awadh Kishore Sharma. By order dated 16.08.2012, both parties compromised the case and award was prepared for the entire property left by Raj Keshwar Singh. As per the genealogical table given by the Opposite Party No.2 in para 4 of the Counter Affidavit, Raj Keshwar Singh was also agnates of the petitioners.



13. Therefore, in the facts and circumstances of the case, discussed in detail above, this Court is of the view that the dispute between the parties is essentially of civil dispute and the same has been given a cloak of criminal offence. As such, continuance of the criminal proceeding against the petitioners would be abuse of process of Court and mere harassment to the petitioners.

14. In view of such, the order dated 02.07.2013 passed by the Judicial Magistrate, 1st class, Aurangabad, in Complaint Case No.68 of 2013 by which he has found *prima facie* case against the petitioners under Section(s) 417, 418, 465, 468/34 Indian Penal Code along with entire criminal proceeding against the petitioners is hereby quashed.

15. The application is, accordingly, allowed.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	NAFR
CAV DATE	24-04-2017
Uploading Date	20-05-2017
Transmission Date	20-05-2017

