

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.35985 of 2011

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

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1. Shashi Bala Sinha wife of Jitendra Narayan Sinha
 2. Jitendra Narayan Sinha son of Sri Awadhesh Narayan Sinha. Both resident of C/4, Road No., 3, Water Tower, R. Block, P.S. Kotwali, District- Patna.

.... Petitioners

Versus

1. The State of Bihar
2. Bharat Prasad Singh son of Late Mahendra Singh, resident of Village- Chilbilli, P.S. Beur, District- Patna.

.... Opposite Parties

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Appearance :

For the Petitioners	:	Mr. Ajay Kumar Thakur, Advocate Mrs. Babita Kumari, Advocatte.
For the State	:	None.
For the O.P. No.2	:	Mr. Abhay Kumar Singh, No. 1, Adv. Mr. Siddhartha Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL JUDGMENT

Date: 14-09-2017

The instant Criminal Miscellaneous has been filed for quashing the order dated 05.01.2011 passed by Miss. Kumari Vijaya, the then Judicial Magistrate, 1st Class, Patna, whereby and whereunder, after finding prima-facie case to be made out against the petitioners, i.e. accused nos. 1 and 2 under 406 of the I.P.C. they have been ordered to be summoned in the Complaint Case No. 3245 (C) of 2010.

2. Bharat Prasad Singh, opposite party no.2 filed the complaint petition in the court of the Chief Judicial Magistrate, Patna stating interalia therein, that the wife of the complainant, namely, Smt. Manbhawati Devi executed written agreement for sale of the land of Khata No. 3, Plot No. 675, area 18 katha 10 dhur, 13 dhurki of



mauza Chilbilli, P.S. Beur, District- Patna before the year 2006 in favour of accused no.2 Smt. Shashi Bala Sinha in presence of accused nos. 1 and 3. The complainant was in need of heavy amount for construction of house and accused nos. 1 to 3 assured him to procure loan from the Bank and then they told that if she executes registered power of attorney in the name of Shashi Bala Sinha for the land of Khata No. 3, Plot No. 672 area 51 decimals of Village- Chilbilli they will procure loan from the Bank and accordingly the wife of the complainant executed registered power of attorney in the name of Shashi Bala Sinha on 18.03.2006 and Shashi Bala Sinha executed a written agreement agreeing therein that the said power of attorney was made for taking loan of Rs. 3,00,000/- in the name of Manbhawati Devi from the HDFC Bank Boring Road, Patna in which Shashi Bala Sinha and her Devar Sri Gautam Kumar Sinha are the guarantor and in the said agreement it was written that if the money is due of the Bank then she after selling the land according to the power of attorney will pay the Bank Loan and after clearing the loan the power of attorney will be returned back to Manbhawati Devi. The complainant used to meet with accused nos. 1 to 3 and enquired about the loan but they did not give satisfactory answer and till then the accused nos. 1 to 3 did not provide any loan from the Bank and the complainant did not receive any loan and when the complainant asked the accused persons to return the original power of attorney then they refused and on the basis of the said power of attorney the accused no.2 has sold



portion of the aforesaid land in connivance with the accused persons. The wife of the complainant died on 13.12.2009 and on 28.11.2010 all the accused persons called the complainant at the house of accused no.1 for panchayati and he went there and accused no.2 demanded agreement dated 18.03.2006 and when he refused to return the said agreement then all the accused persons assaulted the complainant. The complainant till date did not receive any loan and any consideration money and the accused persons cheated the complainant and grabbed his land. On the said land the complainant sown paddy crops which was ready for harvesting but the accused persons gave threatening to harvest the said paddy crops by force and then the police was informed who directed to lodge a complaint in the Court.

3. The aforesaid complaint was transferred for enquiry in the court of Miss. Kumari Vijaya where the complainant was examined on the solemn affirmation and then two enquiry witnesses, namely, Krishna Kumar and Satendra Kumar were examined and thereafter the learned Magistrate passed the impugned order dated 05.01.2011 against the petitioners.

4. The petitioners being aggrieved and dissatisfied with the said order filed this Criminal Miscellaneous challenging the legality, correctness and propriety of the same. The learned counsel for the petitioners arguing in this case has submitted that the power of attorney is the registered document, whereas, the deed of agreement is unregistered document, so the power of attorney being registered will



prevail and not the agreement. After fully understanding the impact the wife of the complainant has executed the registered power of attorney in favour of Shashi Bala Sinha on 18.03.2006 wherein the present complainant is also witness. No offence as alleged is made out against the petitioner. Manbhawati Devi has also handed over the registered sale deed with regard to present plot in question to Shashi Bala Sinha at the time of registering the registered power of attorney and even today the said original deed is lying with her. The power of attorney was executed in the year 2006 in the month of March and the present complaint petition has been filed in the year 2010, i.e. after lapse of more than three years and this itself goes to show that with oblique motive the present complaint has been filed. There was no agreement either in between the present complainant or Shashi Bala Sinha. Manbhawti Devi has not filed any complaint in her life time nor she made any complaint that the said power of attorney was in lieu of taking any loan. No civil suit can be filed for annulment of the power of attorney as more than three years have already expired and only with a view to put pressure and for malafide intention the present complaint was filed. Sofar petitioner no.2 is concerned, he do not figure in any of the documents and it appears that he has been made accused because he is the husband of Shashi Bala Sinha. The learned court below has erred in issuing process against the petitioners for facing the trial as no offence under section 406 of the I.P.C is made out against the petitioners and as such the impugned order is fit to be



set aside.

5. On the other hand, the learned counsel for the opposite party no.2 and the learned A.P.P. submit that in the complaint petition also there is allegation against the petitioners. It was the petitioner no.2 who has done everything. He got executed the registered power of attorney in favour of his wife with the assurance to provide loan from the H.D.F.C. Bank, Patna to the complainant but no loan amount was given and as such as per the agreement which was executed on the same date the power of attorney was to be returned, but on that basis got executed the sale deeds in favour of other accused persons though against them cognizance has not been taken. During enquiry the witnesses have stated the role of petitioner no.2, namely, Jitendra Narayan Sinha and he being the husband has done everything and as such the impugned order being quite proper, legal and correct does not require any interference by this Court.

6. Having considered the submissions urged at the Bar, going through the record and finding that on the same day the registered power of attorney was executed and the agreement was executed though the agreement was unregistered but signature of Shashi Bala Sinha is not denied on that agreement. From perusal of the agreement and from perusal of the statements of the enquiry witnesses and the statement of the complainant on the solemn affirmation prima-facie offence under section 406 of the I.P.C. is made out against the petitioners and therefore there is no need for any



interference by this Court. At this stage the defence of the accused persons cannot be adjudged. The points raised here can well be adjudged at the time of framing of charge and as such the impugned order being legal, proper and correct does not require any interference by this Court.

7. In the result, finding no merit in this Criminal Miscellaneous the same is hereby dismissed. The petitioners may raise all these points at the time of framing of charge.

8. Let the L.C.R. be returned to the concerned court

(Jitendra Mohan Sharma, J)

Abhay/-

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