

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.40754 of 2013

In the matter of an application under section 482 of the Code of Criminal Procedure

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Asharafi Singh Son Of Late Muinnilal Singh Resident Of Village - Shahadullahpur,
Ps.-Ganga Bridge, Dit.-Vaishali

.... Petitioner/s

Versus

1. State Of Bihar
2. Anand Kumar Sonof Late Kamleshwar Sah Resident Of Mohalla - Bagmali,
Hajipur, P.S. - Town Hajipur Dist.- Vaishali

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Bhola Prasad Mr. M.K. Jha, Advocates
For the Opposite Party/s	:	Mr. Renu Kumar, Addl P.P.

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
C.A.V. JUDGMENT

Date: 24-03-2017

Heard learned counsel for the parties.

Petitioner, by means of this application under section 482 of the Code of Criminal Procedure, have invoked the inherent jurisdiction of this Court with prayer to quash the order dated 19.07.2013 passed by Sri Ravi Kumar, Judicial Magistrate, 1st Class, Hajipur, Vaishali in Case No. C1-149/92, Trial No. 3689 of 2013, whereby and whereunder the Magistrate has found a prima facie case against the petitioner and others for offence under section 420, 423/34 of the Indian Penal code and summoned them for their appearance ignoring the order of this Hon'ble Court dated 23.02.1995, passed in Cr. Misc. No. 1881 of 1994.



Allegation against the petitioner is that he alongwith others approached the complainant with request that his presence was required for attesting a sale deed as witness. However, by playing fraud, petitioner and others obtained his signature/thumb impression on several written stamp papers. Later he came to know that they got executed sale deed of his land for a consideration money of Rs. 40,000/- whereas the complainant was paid only a sum of Rs. 20,000/-.

The contention of the learned counsel for the petitioner is that upon investigation, police submitted final report coming to the conclusion that all the three sale deeds were voluntarily executed by the complainant after obtaining permission from the competent authorities and thus, found the case to be false. It is further submitted that on protest being filed by the complainant, cognizance under section 420, 468/34 and 120B of the Indian Penal Code was taken. Thereafter, petitioner filed Cr. Misc. No. 1881 of 1994 before this Hon'ble Court praying for quashing the order taking cognizance. This Hon'ble Court vide order dated 23.02.1995 set aside the order taking cognizance dated 11.01.1994 and remitted back the matter to the Court below for disposal in accordance with law after further preliminary enquiry and taking into consideration the result of the enquiry being held by the District Sub Registrar, Hajipur. It is further



submitted that the District Sub Registrar after hearing the parties and after enquiry vide order dated 29.12.1995 found all the three sale deeds genuine which was approved by the Collector. Learned counsel submits that the Magistrate while taking cognizance neither made any preliminary enquiry nor considered the result of the enquiry done by the District Sub Registrar. Learned counsel further submits that the order impugned suffer from non-application of mind and is in utter violation of the orders of this Hon'ble Court.

Having heard learned counsel for the parties and keeping in view the facts and circumstances of the case, it appears that the arguments advanced by learned counsel for the petitioner has force. The Magistrate while passing the order impugned did not take into consideration the order of this Court dated 23.02.1995, passed in Cr. Misc. No. 1881 of 1994 whereby the Court below was directed to make further preliminary enquiry in the matter. The Court below was directed to dispose of the matter in accordance with law after taking into consideration the report of the preliminary enquiry as also the result of the enquiry being held by the District Sub Registrar, Hajipur.

In this view of the matter, the order dated 19.07.2013 passed by Sri Ravi Kumar, Judicial Magistrate, 1st Class, Hajipur, Vaishali in Case No. C1-149/92, Trial No. 3689 of 2013, whereby



and whereunder the Magistrate has found a prima facie case against the petitioner and others for offence under section 420, 423/34 of the Indian Penal code and summoned them for their appearance ignoring the order of this Hon’ble Court dated 23.02.1995, passed in Cr. Misc. No. 1881 of 1994, is set aside and the matter is again sent back to the Court below for disposing of the matter in accordance with law taking into consideration the further preliminary enquiry as also the result of the enquiry held by the District Sub Registrar, Hajipur, as directed earlier vide order dated 23.02.1995 passed in Cr. Misc. No. 1881 of 1994.

The application, thus, stands disposed of.

(Arvind Srivastava, J)

Manish/-

AFR/NAFR	NAFR
CAV DATE	30.01.2017
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