

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.16948 of 2011

Arising Out of Complaint Case No. 603 year 2004 District- PATNA

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1. Suresh Prasad @ Suresh Chandra Prasad, Son of Late Ram Prasad, C/o Winner Pharmaceuticals, Kam Nagar, Gali Pani Tanki Road, Police Station-Khajekalan, Patna City, District- Patna
 2. Malay Kumar Singh son of late Ratan Lall Singh, resident of 167, Karnani Estate, 209, Achariya Jagadish Chandra Bose Road, Police Station-Beniapukur, Kolkata-700 071, District-24 Parganas (South)

.... Petitioner/s

Versus

1. The State of Bihar
2. Md. Ali Imam son of late Haji Md. Sayeed, resident of Nawabg Manzil Khajekalan, Ghat Road, P.S.-Khajekalan, Patna City

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Radha Mohan Singh
Mr. Marigank Mauli
Mr. Ran Nath Modi

For the Opposite Party/s : Mr. Sunil Kumar
Mr. Arvind Kumar
Mr. Upendra Prasad

For the State : Mr. Akhileshwar Dayal, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 31-08-2017

This application under Section 482 of the Code of Criminal Procedure has been filed to quash the order dated 15.10.2004 passed by the learned Judicial Magistrate, 1st Class, Patna City in Complaint Case No. 603 of 2004. The learned



Magistrate finding prima facie case for the offence under Sections 403, 406, 423, 427 and 120-B of the Indian Penal Code ordered for issuance of summons against the petitioners.

2. Heard both sides.

3. The learned counsel for the petitioners submits that the allegation of dishonest misappropriation of the landed property, criminal breach of trust and fraudulent execution of document is vague and not specific. The dispute between the parties is purely a civil dispute. The complainant claims the land by virtue of three registered sale deeds purported to be executed by the mother of the petitioner No. 2. The complainant (Opposite Party No. 2) has filed an Eviction Suit No. 03 of 2003, which is pending disposal before the learned Sub Judge, 1, Patna City. The mother of the petitioner No. 2 has also filed a Title Suit No. 152 of 2003 for cancellation of all the three sale deeds dated 02.04.1998, which are the basis of title of the complainant (Opposite Party No. 2). The dispute between the parties is purely a civil dispute and no criminal offence is made out against any of the petitioners and so, the criminal prosecution of the petitioners would be an abuse of process of Court and the same is fit to be quashed.

4. The learned counsel for the Opposite Party No. 2 as well as the learned A.P.P. for the State opposed the submissions. It was



submitted that the criminal prosecution of petitioners is quite maintainable irrespective of the pendency of civil cases. The learned Magistrate has rightly taken cognizance and so, this criminal miscellaneous application having no merit is fit to be quashed.

5. On perusal of impugned order and documents on record, I find that the complainant claims the land on the basis of three sale deeds executed by the mother of the petitioner No. 2. The complainant got his name mutated and filed an Eviction Suit No. 03 of 2003. The mother of the petitioner No. 2 having come to know about the filing of eviction suit by petitioners against her tenants has also filed a Title Suit No. 152 of 2003. The petitioners have challenged the genuineness of the sale deeds, which is the basis of title of the complainant. The eviction suit and title suit are presently pending before civil court. The dispute between the parties appears to be a civil suit and unless any finding as regards genuineness of document is not arrived by the competent court the criminal prosecution of the petitioners would be an abuse of process of Court. In view of above facts, the order dated 15.10.2004 taking cognizance against the petitioners appears to be bad in law.

6. In the above facts and circumstances, the order dated 15.10.2004 passed by the learned Judicial Magistrate, 1st Class, Patna City in Complaint Case No. 603 of 2004 taking cognizance



against these petitioners for the offence under Sections 403, 406, 423, 427 and 120-B of the Indian Penal Code is hereby quashed and this application is allowed.

(Sanjay Kumar, J)

ajay gupta/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.09.2017
Transmission Date	05.09.2017

