

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.15844 of 2010

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

- =====
1. Vishwanath Prasad Yadav son of Late Jagannath Pd. Yadav,
 2. Bipin Kumar son of Vishwanath Prasad Yadav

Both resident of village- Nandpuri, Bhagwanpur, P.S.-Sadar, District-
Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar
2. Ajay Kumar son of Late Ramashray Rai, resident of village- Nandpuri,
Bhagwanpur, P.S.-Sadar District-Muzaffarpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : None
For the Opposite Party/s : None
For the State : None

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 05-09-2017

Despite repeated calls, neither the petitioners nor their
lawyer has turned up to press this application. Similarly, neither the
complainant nor his lawyer has turned up to contest the matter.

2. Perused the record including the lower court records
summoned by this court vide order dated 23.08.2012. The present
application filed under section 482 of the Code of Criminal Procedure
(for short 'the CrPC') was admitted for hearing, vide order dated



23.08.2012 and notice was issued to opposite party no.2, which was validly served upon him.

3. This application has been filed for quashing the order dated 18.05.2009 passed in Complaint Case No.439 of 2009 by the learned Judicial Magistrate, 1st Class, Muzaffarpur by which he has summoned the petitioners and one another to face trial for the offences punishable under Sections 468, 469, 470 and 420 of the Indian Penal Code (for short 'the IPC').

4. It would be manifest from perusal of the complaint that Title Suit No.54 of 1976 and Title Suit No.31 of 1980 were pending between the complainant and the petitioners in the court of Sub Judge-II, Muzaffarpur. Though, the suits were decreed in favour of the complainant and against the accused persons in respect of the land admeasuring an area 1.33 decimals as detailed at the foot of the complaint, the complainant came to know that petitioner no.1 Vishwananth Prasad Yadav had executed a power of attorney in favour of accused nos. 3 and 4, namely, Prem Kumar Kaushik and Shree Anant in respect of the aforesaid land without any right or title and petitioner no.2 became a witness to the aforesaid power of attorney. It is alleged that power of attorney was prepared fraudulently in order to usurp the land of the complainant without there being any right or title in favour of petitioner no.1.



5. Statement of the complainant was recorded on oath and in course of enquiry witnesses namely, P.W.1 Mithilesh Kumar, P.W.2 Lalbabu Singh and P.W.3 Baleshwar Rai were examined in support of the complainant. After holding enquiry, the learned Judicial Magistrate, vide order dated 18.05.2009, summoned the petitioners and one Prem Kumar Kaushik in exercise of powers conferred under Section 204 of the CrPC for holding trial. The aforesaid order dated 18.05.2009 is under challenge in the present application.

6. The petitioners have taken a plea that ingredients of the offences are not attracted on the facts and in the circumstances of the case. Upon examination of the record, I find that the only allegation in the present complaint is that the petitioner no.1 had executed a power of attorney in favour of Prem Kumar Kaushik and Shree Anant. Be it noted that the learned Magistrate has not summoned Shree Anant. It would further appear that no transaction whatsoever has been done at any point of time on the basis of power of attorney and the complainant did not suffer any loss. I further find that there is no allegation that petitioner no.1 had cheated any one by impersonation. The claim of the complainant that execution of a power of attorney by the petitioner no.1, who was in no way concerned with the land mentioned in the complaint amounted to forgery of document with the intention to usurp the land of the complainant and the other accused



persons, who are witnesses to the power of attorney or in whose favour power of attorney was executed connived and colluded with petitioner no.1, in the opinion of this Court, would not constitute any offence, as there is a fundamental difference between a person executing a power of attorney claiming that the land for which power is conveyed is his property, and a person executing a power of attorney impersonating the real owner. When a person executes a document in his own name claiming a property to be his own under a bona fide belief that the property actually belongs to him, without there being any allegation that the accused in any manner tried to deceive the complainant or any one else by making a false or misleading representation or by any other action or omission, offences under Sections 467, 468, 470, 471 etc. of the IPC would not be attracted. Similarly, as there is no allegation that the petitioners had cheated any one, the ingredients of cheating, as stated in Section 415 of the IPC, would also be not attracted.

7. Thus, looking at the matter from all angles, I am of the opinion that prosecution of the petitioners for the alleged offence under Sections 420, 468, 469 and 470 of the IPC, would be a clear abuse of the process of law.

8. In that view of the matter, the application is allowed. The impugned order dated 18.05.2009 passed in Complaint Case No.439



of 2009 is set aside.

9. The lower court records be sent back to the court below forthwith.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	09.09.2017
Transmission Date	09.09.2017

