

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.35909 of 2013

Arising Out of PS.Case No. -679 Year- 2012 Thana -KATIHAR COMPLAINT CASE District-
KATIHAR

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1. Md. Ismail S/o Md. Samsuddin, Resident of Village- Dhaja Ghat,
Binodpur, P.S.- Kodha, District- Katihar

2. Md. Sakir, S/o Ainul Haque

3. Abdul Majid, S/o Md. Yunus

4. Sohrab Ali, S/o Md. Jalaluddin

Petitioner Nos. 2, 3 & 4 are Resident of Village- Kanta Deh, P.S.-
Kadwa, District- Katihar

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Petitioners

Versus

1. The State of Bihar

2. Bibi Aymona, W/o Md. Motalib

Resident of Village- Bijali, P.S. Dandkhora, District- Katihar.

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Jagdish Prasad, Advocate

For the O.P. No. 2 : Mr. Jagdish Prasad Bhagat, Advocate

For the Opposite Parties : Mr. J.Upadhyay (APP)

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CORAM: HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA
ORAL ORDER

4 03-04-2017 Heard the learned counsel for the petitioners, the

learned A.P.P. for the State and learned counsel for the opposite

party no.2.

Perused the complaint petition and order dated
27.08.2012 whereby and whereunder cognizance has been taken in
the complaint petition, there is allegation that the petitioners got
created sale deeds said to be executed by the complainant by
another lady and when the complainant obtained the certified copy
of those sale deeds she came to know about the forgery committed
by the petitioners (accused persons). The complainant in her
statement on S.A. and further other witnesses have supported the
allegation that the accused persons have created sale deeds said to



be executed by the complainant though she has not executed the same and another lady was used in creating those sale deeds and whose photo and thumb impression were taken. The learned Chief Judicial Magistrate, Katihar, after considering the materials available on the record passed the impugned order dated 27.08.2012 taking cognizance against the accused persons (petitioners).

Submission of petitioners' is that remedy lies in competent Civil Court and Title Suit has already been filed by the complainant. The name of the petitioners were mutated in Anchal Office against which appeal was filed in the Court of L.R.D.C. and L.R.D.C. did not cancel the order passed by Anchal Adhikari and directed the appellant (complainant) to go before Civil Court to seek her remedy. The petitioners are paying rent and getting rent receipt and, as such, the cognizance order taken is bad in law and is fit to be set aside.

The learned counsel for the opposite party no.2 and learned A.P.P. on the other hand submits that the order taking cognizance does not require any interference as the same has been passed after consideration of the materials available on the record. The complainant in her S.A. and witnesses have supported the allegation and, as such, the order is fit to be confirmed. At this stage defence of the accused persons cannot be looked into.



Under the facts and circumstances as stated above, considering that the learned Magistrate after going through the complaint petition and the materials available on the record has passed legal, proper and correct order and, as such, there is no need for any interference by this Court at this stage. The Court is not required to consider the defence of the accused persons, only it has to be seen as to whether the prima facie case is made out on the basis of materials available on the record and the learned Magistrate after finding that prima facie case for the offences under Sections 420, 468 and 120B of the Indian Penal Code is made out against the accused persons has passed the order dated 27.08.2012 which is quite correct, legal and proper.

In the result, finding no merit in this Criminal Miscellaneous, the same is hereby dismissed.

(Jitendra Mohan Sharma, J.)

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