

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.2633 of 2014

Arising Out of PS.Case No. -333 Year- 2008 Thana -BHABHUA District- BHABHUA (KAIMUR)

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1. Kamla Prasad Singh Son Of Late Chhabinath Singh Resident Of Village- Chhatarapura, P.S.- Ramgarh, District- Kaimur At Bhabhua
 2. Mahanand Singh Son Of Late Gaya Singh Resident Of Village- Chhatrapura, P.S.- Ramgarh, District- Kaimur (Bhabhua)
 3. Ashok Kumar Singh Son Of Late Gaya Singh Resident Of Village- Chhatrapura, P.S.- Ramgarh, District- Kaimur (Bhabhua)
 4. Daroga Tiwari Son Of Late Sukhram Tiwari Resident Of Village- Narahan, P.S.- Ramgarh, District- Kaimur (Bhabhua)
 5. Bir Bahadur Singh Son Of Sri Jairam Singh Resident Of Village- Masarhi, P.S.- Ramgarh, District- Kaimur (Bhabhua)

.... Petitioners

Versus

1. The State Of Bihar
2. Pintu Singh, Son of Late Surendra Singh Resident Of Village- Chhatrapura, P.S.- Ramgarh, District- Kaimur (Bhabhua)

.... Opposite Parties

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For the Petitioners	:	Mr. Nawal Kishore Singh, Advocate
For the State	:	Mr. Ashok Kumar Singh, A.P.P.

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Appearance :

For the Petitioner/s : Mr.
For the Opposite Party/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 27-07-2017

This application has been filed under Section 482 of the Code of Criminal Procedure, 1973 challenging order dated 27.8.2013 passed by Chief Judicial Magistrate, Bhabhua (Kaimur) in Bhabhua P.S. Case No.333 of 2008 whereby he has taken cognizance of the offence under Sections 418, 420, 406, 467, 468, 469, 471, 504, 323 and 506 of the Indian Penal Code.

2. The F.I.R. was registered on the basis of complaint case



filed before the court of C.J.M., which was sent under Section 156(3) of the Cr.P.C. for lodging F.I.R.

3. The brief fact giving rise to this case is that plot nos.31 and 314 of khata no.5 area 31 decimals situated in village Bishunpura, thana no.91, District- Kaimur was in the exclusive possession of the complainant and in Register-II name of his grand father is recorded. Now the same land vide a registered sale deed dated 25.2.2008 have been sold to Kamla Prasad Singh so accused persons have created a forged sale deed.

4. Learned counsel appearing on behalf of the petitioner submits that petitioner nos.2 and 3 are vendors and agnates of the complainant. Earlier a Title Suit No.72 of 1955 was filed for partition of respective share of co-sharers and in that very case, on the basis of compromise the title suit was disposed of by passing judgment that the compromise will form the part of the decree. In the said compromise petition, grand father of the complainant was signatory and the land in question allotted to the share of ancestors of petitioner nos.2 and 3. The land allotted in their share was sold by them, so in this backdrop of the fact no prima facie case of cheating and making of forged document or breach of trust is made out. Petitioner nos.4 and 5 are attesting witnesses of the sale deed.

5. Learned counsel appearing on behalf of the opposite



party no.2 submits that no final decree was prepared in Title Suit No.72 of 1955 and in the land records the name of the grand father of the complainant was recorded. Learned counsel submits that the learned C.J.M., without applying his judicial mind, has taken cognizance of the offence as no prima facie case under the alleged offences are made out. In support of his contention he has placed reliance in case of **Md. Ibrahim & Ors. Vrs. State of Bihar & Anr. reported in 2009(4) PLJR (SC) 99.**

5. Having considered rival submissions and on perusal of record, this Court is of the view that no prima facie case under Sections 418, 420, 406, 467, 468, 469, 471, 504, 323 and 506 of the Indian Penal Code is made out even if the facts alleged in the complaint petition is taken into entirety as there is absence of ingredients of cheating, breach of trust or making of false document his property has executed sale deed in favour of petitioner no.1 whereas petitioner nos.4 and 5 are witnesses to the execution of sale deed. The petitioner nos.2 and 3 claiming the property conveyed is also absence of ingredients of cheating, no allegation of fraudulent and dishonest inducement to complainant by accused persons and in consequence no delivery of any property by the complainant to accused persons.

6. In the case of **Md. Ibrahim & Ors Vrs. State of**



Bihar & Anr. (Supra), the Hon'ble Court has held as follows :

“ There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorized or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he *bona fide* believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of 'false documents', it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted.”

7. In the backdrop of the facts as alleged in the present complaint no case of make a false document is made out as petitioner nos.2 and 3 have executed sale deed claiming that property conveyed is his further it is not a case of impersonating someone or a case of



making interpolation is already executed sale deed or dishonestly or fraudulently caused any person to execute a sale deed. So no prima facie case as alleged is made out in this case even taking into consideration entire facts as alleged in the complaint. Therefore, for aforesaid reason, entire criminal proceeding including the order dated 27.8.2013 pending in the court of C.J.M., Bhabhua (Kaimur) in Bhabhua P.S. Case No.333 of 2008 is hereby set aside.

8. The petition stands allowed.

(Arun Kumar, J)

N.H./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	28-08-2017
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