

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.10118 of 2014

Arising Out of P.S.Case No. -1428 Year- 2012 Thana -PATNA COMPLAINT CASE District-
PATNA

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Vijay Rai S/O Late Rameshwar Rai Resident Of Mohalla Chakaram, P.O. G.P.O.,
P.S. Budha Colony, District Patna.

.... Petitioner

Versus

1. The State Of Bihar
2. Madhu Singh W/O Sri Rajkeshwar Singh Resident Of Mahaddipur Kothi,
Manpur, P.S. Mufassil Gaya, District Gaya.

.... Opposite Parties

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Appearance :

For the Petitioner : Miss Kumari Priyanka, Advocate
Mr. Rakesh Narayan Singh, Advocate
For the Opposite Parties : Mr. Humayu Ahmad Khan, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 24-07-2017

Heard.

2. This application under Section 482 of the Cr.P.C. has been filed to quash the order dated 16.08.2013 passed by Judicial Magistrate, Ist Class, Patna in Complaint Case No.1428(C) of 2012 whereunder the petitioner was summoned to face the trial for the offence under Sections 406 and 420/34 of the IPC.

3. The facts in brief is that the Opposite Party No.2 filed a complaint case on the file of CJM, Patna alleging inter-alia that she had purchased a land from this petitioner by virtue of registered sale deed dated 24.12.2008 for a total consideration amount of Rs.10,79,000/-. The Opposite Party No.2 had incurred an amount of Rs.1,19,154/- also towards the stamp duty and registration charges. The petitioner came in possession over the said land. She filled soil and erected boundary wall at the cost of Rs.8,01,1846/-. The complainant thus spent total



amount of Rs.2,00000/- over the same. She has further alleged that in the month of June, 2011 some anti-social element went over her land and started illegal construction and on enquiry they disclosed that they were the owners of the said land. The persons who had started making construction also filed a case no.1/2009-10 against Laxman Rai and this petitioner for cancellation of Jamabandi which was created in their name on 01.04.2010. The learned DCLR while cancelling the Jamabandi has observed about the right title and possession of Md. Nasim Ahmad and claim of the petitioner was disbelieved. After the said order of DCLR the complainant requested this petitioner to refund the entire consideration money which was taken by him. A legal notice was also served on the petitioner. The complainant has alleged that this petitioner was not the rightful owner of the said land and by committing fraud and misleading had executed sale deed and taken money. The matter was enquired and the learned Magistrate finding prima-facie case has summoned the petitioner to face the trial for the offence under sections 406, 420, 468, 471 and 120B of the IPC.

4. It has been submitted that the petitioner was the rightful owner of the land which was bonafide transferred to the complainant by virtue of registered sale deed. The said land originally belonged to Maher Chand Mahto, Abdul Majid having half share each. The said Nasim Ahmed and his family members have already sold their share in the land. Another sharer Mahesh Chandra Mahto died leaving behind one Dwarika Mahto and a daughter, namely, Sanjhari Devi as his legal heir and successor. Out of them Dwarika Mahto died issueless and his sister Sanjhari Devi died leaving behind two sons, namely, Ram Ayodhaya Rai @ Jhulan Rai and Jangli Rai. One of sons namely, Jangli Rai adopted Alak Nath Rai. After the death of Dwarika Mahto his widow inherited in the entire property. She gifted her entire property to her Bhagina Ram Ayodhaya Rai @ Jhulan Rai by



virtue of registered deed of gift dated 02.04.1968. The said Ram Ayodhaya Rai and Alak Nath Rai in need of money sold four kathas of land to the petitioner and one Laxman Rai who came in possession over the said land. Their names were mutated and Zamabandi was created in their name. The petitioner being in peaceful possession of the said two katha land sold to the complainant by virtue of registered sale deed dated 24.12.2008 and put her in possession thereof. The dispute between the parties is purely a civil dispute. This is not a case of impersonation. One of the sharer Nasim Ahmad has filed a case of 1/2009-10 before the DCLR where without inviting any objection, cancelled the Zamabandi. The order passed by the DCLR was without jurisdiction as the DCLR had or has no jurisdiction to decide right title or possession of the party. The order of DCLR has been challenged in the appeal. The other co-sharer has filed a title suit no.2 of 2012 for declaration of title which is presently pending in the Court of Sub-Judge-Ist, Patna. It has been submitted that the petitioner has not committed any fraud or breach of trust by taking money. The learned Magistrate has taken cognizance without applying judicial mind and so the same is fit to be quashed.

5. The learned A.P.P opposed the submission.

6. On perusal of complaint petition as well as annexure available on record, I find that the petitioner has purchased land from the successor of recorded tenant in the year 1985 and after remaining in possession for about 23 years, he sold the land to the Opposite Party No.2 by virtue of registered sale deed. The complainant has alleged that this petitioner has cheated her as he had no right title or possession only on the ground that the DCLR has cancelled the Zamabandi standing in his name. The said order of DCLR is sub-judice before High Court. The dispute between the parties is purely a civil dispute. The title suit no.2 of 2012 is also pending before Sub-Judge. In view of pendency of civil suit



and also considering the nature of dispute between the parties, the continuation of criminal case for prosecution of the petitioner would amount to abuse of the process of the court.

7. In this view of the matter, the order taking cognizance is not sustainable and accordingly quashed, and this criminal application is allowed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	01.08.2017
Transmission Date	01.08.2017

